

# **Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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HANGZHOU CHIC INTELLIGENT  
TECHNOLOGY CO. and UNICORN  
GLOBAL, INC.,

Plaintiffs,

v.

THE PARTNERSHIPS AND  
UNICORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE A,  
Defendants.

Case No.

1:20-cv-  
04806

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VIDEOCONFERENCE DEPOSITION OF  
JIM GANDY

DATE: Wednesday, October 26, 2022  
TIME: 10:04 a.m.  
LOCATION: Remote Proceeding  
Southport, North Carolina  
REPORTED BY: Arkady Sandoval, Notary Public  
JOB NO.: 5506428

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| <p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS HANGZHOU CHIC INTELLIGENT</p> <p>3 TECHNOLOGY CO. and UNICORN GLOBAL, INC.:</p> <p>4 MARK BERKOWITZ, ESQUIRE (by videoconference)</p> <p>5 Tarter Krinsky &amp; Drogin, LLP</p> <p>6 1350 Broadway</p> <p>7 New York, NY 10018</p> <p>8 mberkowitz@tarterkrinsky.com</p> <p>9 212-216-1166</p> <p>10</p> <p>11 ON BEHALF OF JIM GANDY:</p> <p>12 ROBIN HE CHENG, ESQUIRE (by videoconference)</p> <p>13 Glacier Law, PLLC (NY)</p> <p>14 200 Park Avenue, Suite 1703</p> <p>15 New York, NY 10166</p> <p>16 robin.cheng@glacier.law</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 Chandler Sturm, Esquire (by videoconference)</p> <p>20 Queena Zhang, Esquire (by videoconference)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 4</p> <p>1 J. GANDY</p> <p>2 THE REPORTER: Good morning. My name</p> <p>3 is Arkady Sandoval; I am the reporter</p> <p>4 assigned by Veritext to take the record of</p> <p>5 this proceeding. We are now on the record</p> <p>6 at 10:04 a.m.</p> <p>7 This is the deposition of Jim Gandy</p> <p>8 taken in the matter of</p> <p>9 Hangzhou Chic Intelligent Technology Co.,</p> <p>10 and Unicorn Global, Inc., v.</p> <p>11 The Partnerships and Unicorported</p> <p>12 Associations Identified on Schedule A at</p> <p>13 on October 26, 2022, at 5961 Spikerush</p> <p>14 Trail, Southport, North Carolina.</p> <p>15 I am a notary authorized to take</p> <p>16 acknowledgments and administer oaths in</p> <p>17 New Jersey and New York. Parties agree</p> <p>18 that I will swear in the witness remotely</p> <p>19 outside of his presence.</p> <p>20 Additionally, absent an objection on</p> <p>21 the record before the witness is sworn,</p> <p>22 all parties and the witness understand and</p> <p>23 agree that any certified transcript</p> <p>24 produced from the recording virtually of</p> <p>25 this proceeding:</p> |
| <p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 EXAMINATION: PAGE</p> <p>3 By Mr. Berkowitz 6</p> <p>4 By Mr. Cheng 125</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 NO. DESCRIPTION PAGE</p> <p>8 Exhibit 1 Jim Gandy Opening Report 19</p> <p>9 Exhibit 2 Jim Gandy Rebuttal Report 56</p> <p>10 Exhibit 3 Expert Declaration of Lance Rake 73</p> <p>11 (Exhibits attached.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  | <p style="text-align: right;">Page 5</p> <p>1 J. GANDY</p> <p>2 - is intended for all uses permitted</p> <p>3 under applicable procedural and</p> <p>4 evidentiary rules and laws in the same</p> <p>5 manner as a deposition recorded by</p> <p>6 stenographic means; and</p> <p>7 - shall constitute written</p> <p>8 stipulation of such.</p> <p>9 At this time will counsel please</p> <p>10 identify themselves for the record.</p> <p>11 Mr. Cheng, if you could begin?</p> <p>12 MR. CHENG: Good morning. My name is</p> <p>13 He Cheng and also Robin Cheng, and I am</p> <p>14 the counsel for the deponent.</p> <p>15 MR. BERKOWITZ: Good morning. This</p> <p>16 is Mark Berkowitz, and I am here with</p> <p>17 Chandler Sturm, both of Tarter Krinsky &amp;</p> <p>18 Drogin, on behalf of plaintiffs.</p> <p>19 THE REPORTER: Thank you.</p> <p>20 Hearing no objection, I will now</p> <p>21 swear in the witness.</p> <p>22 Mr. Gandy, please raise your right</p> <p>23 hand.</p> <p>24 //</p> <p>25 //</p>   |

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| <p style="text-align: right;">Page 6</p> <p>1 J. GANDY</p> <p>2 WHEREUPON,</p> <p>3 JIM GANDY,</p> <p>4 called as a witness, and having been first</p> <p>5 duly sworn to tell the truth, the whole</p> <p>6 truth, and nothing but the truth, was</p> <p>7 examined and testified as follows:</p> <p>8 THE REPORTER: Thank you. Counsel.</p> <p>9 EXAMINATION</p> <p>10 BY MR. BERKOWITZ:</p> <p>11 Q Good morning, Mr. Gandy.</p> <p>12 A Good morning.</p> <p>13 Q If you don't mind, could you</p> <p>14 state your full name for the record?</p> <p>15 A Yes, my name is James M. Gandy.</p> <p>16 Q Okay. Do you normally go by</p> <p>17 Jim?</p> <p>18 A I go by Jim.</p> <p>19 Q Okay. I see on some of your</p> <p>20 forms, you say "Jim," sometimes you say</p> <p>21 "James." Just want to make sure I have</p> <p>22 the right person today.</p> <p>23 A Yes.</p> <p>24 Q Okay. So my name is</p> <p>25 Mark Berkowitz. I am one of the</p> | <p style="text-align: right;">Page 8</p> <p>1 J. GANDY</p> <p>2 Q Very good. Okay. So you're</p> <p>3 familiar with the process.</p> <p>4 A Yes.</p> <p>5 Q Okay. So today I'm going to be</p> <p>6 asking you some questions. The reporter</p> <p>7 is going to be taking down your answers.</p> <p>8 Do you understand that you are under oath?</p> <p>9 A Yes, I do.</p> <p>10 Q Do you know what that oath</p> <p>11 means?</p> <p>12 A That I have to tell the truth,</p> <p>13 whatever questions you're asking me.</p> <p>14 Q Great. The court reporter</p> <p>15 mentioned some of the ground rules. I'll</p> <p>16 just go over them quickly. I know you're</p> <p>17 familiar with the process. So I'm going</p> <p>18 to be asking a series of questions. If</p> <p>19 you don't understand my question, ask to</p> <p>20 clarify it. Is that okay?</p> <p>21 A Yes.</p> <p>22 Q Okay. I'm going to assume that</p> <p>23 you understand the questions that I ask</p> <p>24 unless you tell me that you don't</p> <p>25 understand then. Is that fair?</p> |
| <p style="text-align: right;">Page 7</p> <p>1 J. GANDY</p> <p>2 attorney's for plaintiffs in this case.</p> <p>3 We are doing this remotely today.</p> <p>4 Obviously, if there are any technical</p> <p>5 problems, you have trouble hearing or</p> <p>6 video drops out, let us know. We can</p> <p>7 always take a break. It seems like it</p> <p>8 happens at least once or twice during</p> <p>9 these things.</p> <p>10 A Okay.</p> <p>11 Q But we'll do our best. Have you</p> <p>12 had your deposition taken before?</p> <p>13 A Yes, I have.</p> <p>14 Q How many times?</p> <p>15 A I think five.</p> <p>16 Q Okay. When was the last time</p> <p>17 you had your deposition taken?</p> <p>18 A 2021.</p> <p>19 Q Okay. So that was, I guess,</p> <p>20 during the pandemic?</p> <p>21 A Yes.</p> <p>22 Q So you've done a remote</p> <p>23 deposition before?</p> <p>24 A Yes, I've done two remote</p> <p>25 depositions.</p>                | <p style="text-align: right;">Page 9</p> <p>1 J. GANDY</p> <p>2 A Yes, that's fair.</p> <p>3 Q You understand that your counsel</p> <p>4 may object from time to time, but unless</p> <p>5 you're instructed not to, you still need</p> <p>6 to answer.</p> <p>7 A Yes, I understand.</p> <p>8 Q Okay. Try to avoid any non-</p> <p>9 audible responses -- the head nods and</p> <p>10 head shakes -- because the court reporter</p> <p>11 is taking down a verbatim transcript. Is</p> <p>12 that all right?</p> <p>13 A Yes.</p> <p>14 Q Okay. Since we're doing this</p> <p>15 remotely, let's try not to talk over each</p> <p>16 other, again, for the benefit of the court</p> <p>17 reporter so we have a nice, clear record.</p> <p>18 Is that all right?</p> <p>19 A Yes.</p> <p>20 Q Okay. If at any time you need a</p> <p>21 break, of course just please tell us. The</p> <p>22 only thing I ask is that if we are in the</p> <p>23 middle of a question, please answer and</p> <p>24 then we can go take our break. Is that</p> <p>25 all right?</p>     |

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| <p style="text-align: right;">Page 10</p> <p>1 J. GANDY</p> <p>2 A Okay. Sure, that's fine.</p> <p>3 Q Is there any reason you would</p> <p>4 not be able to provide truthful and</p> <p>5 complete testimony today?</p> <p>6 A I don't think so.</p> <p>7 Q Are you on any medications that</p> <p>8 would interfere with your ability to</p> <p>9 provide complete and truthful testimony?</p> <p>10 A No.</p> <p>11 Q Any health issues that would</p> <p>12 interfere with your ability to provide a</p> <p>13 complete and truthful testimony?</p> <p>14 A No.</p> <p>15 Q Okay. Thank you. Do you have</p> <p>16 an understanding as to why you're here</p> <p>17 today?</p> <p>18 A Yes, I do.</p> <p>19 Q What is that understanding, sir?</p> <p>20 A That I'm here to, I guess,</p> <p>21 discuss my reports that I have provided to</p> <p>22 Mr. Cheng in this case.</p> <p>23 Q You have an understanding of</p> <p>24 what this case relates to generally?</p> <p>25 A Yes. It relates to hoverboard</p>   | <p style="text-align: right;">Page 12</p> <p>1 J. GANDY</p> <p>2 all right with you.</p> <p>3 A That's fine.</p> <p>4 Q Okay. If there is a situation</p> <p>5 that arises where you want to refer to a</p> <p>6 specific defendant, just please go ahead</p> <p>7 and point that out, and I will do the</p> <p>8 same. I'm not sure if that situation will</p> <p>9 come up, but just to avoid any issues.</p> <p>10 A That's fine.</p> <p>11 Q When did you first get engaged</p> <p>12 to work in this matter?</p> <p>13 A I was contacted by Mr. Cheng in</p> <p>14 August of 2021.</p> <p>15 Q Prior to that, had you worked</p> <p>16 with any of the defendants in this case</p> <p>17 before?</p> <p>18 A No, I have not.</p> <p>19 Q Had you heard of any of the</p> <p>20 defendants in this case before?</p> <p>21 A No, I had not.</p> <p>22 Q Any familiarity with their</p> <p>23 products prior to 2021?</p> <p>24 A Not prior to being contacted,</p> <p>25 yes.</p> |
| <p style="text-align: right;">Page 11</p> <p>1 J. GANDY</p> <p>2 designs.</p> <p>3 Q Okay. You understand that the</p> <p>4 plaintiffs accuse the defendants of</p> <p>5 infringing a number of design patents</p> <p>6 relating to hoverboards; is that fair?</p> <p>7 A That's correct.</p> <p>8 Q Okay. And it's your</p> <p>9 understanding that the defendants dispute</p> <p>10 those contentions; is that fair?</p> <p>11 A Yes.</p> <p>12 Q Okay. So we represent, there's</p> <p>13 two plaintiffs. There's Hangzhou Chic,</p> <p>14 and there's Unicorn Global. To avoid</p> <p>15 having to continually butcher those names,</p> <p>16 I'm going to call them "plaintiffs." Is</p> <p>17 that all right with you?</p> <p>18 A Sure.</p> <p>19 Q And I understand that your</p> <p>20 report was provided to Mr. Cheng on</p> <p>21 benefit of eight different defendants. Is</p> <p>22 that your understanding as well?</p> <p>23 A That's my understanding, yes.</p> <p>24 Q So I'm going to refer to them</p> <p>25 collectively as "defendants," if that's</p> | <p style="text-align: right;">Page 13</p> <p>1 J. GANDY</p> <p>2 Q Okay. Had you previously worked</p> <p>3 with Mr. Cheng before?</p> <p>4 A No, I have not.</p> <p>5 Q Had you worked with his law</p> <p>6 firm, Glacier Firm, before?</p> <p>7 A No, no I have not.</p> <p>8 Q Okay. Were you contacted</p> <p>9 directly by Mr. Cheng or through an</p> <p>10 agency?</p> <p>11 A I was contacted by Mr. Cheng.</p> <p>12 Q Okay. And I just have to ask</p> <p>13 these questions. Do you have any</p> <p>14 financial interest in any of the</p> <p>15 defendants?</p> <p>16 A No, I do not.</p> <p>17 Q Okay. But you are being paid</p> <p>18 hourly for your work on this case; is that</p> <p>19 correct?</p> <p>20 A That's correct, yes.</p> <p>21 Q I believe it's 350 an hour?</p> <p>22 A That's correct.</p> <p>23 Q Okay. And is your compensation,</p> <p>24 does that hourly rate vary depending on</p> <p>25 whether you're writing reports,</p>                |

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| <p style="text-align: right;">Page 14</p> <p>1 J. GANDY</p> <p>2 participating in depositions, trial,</p> <p>3 anything like that?</p> <p>4 A No, it's the same for any of</p> <p>5 those situations.</p> <p>6 Q Okay. And is any of your</p> <p>7 compensation dependent on the outcome of</p> <p>8 this lawsuit?</p> <p>9 A No, it's not.</p> <p>10 Q Besides the defendants and</p> <p>11 counsel for the defendants, have you</p> <p>12 spoken with anybody about this case?</p> <p>13 A No. No, I have not.</p> <p>14 Q That was actually a poor</p> <p>15 question. Have you ever spoken directly</p> <p>16 with any of the defendants in this case?</p> <p>17 A No, I have not.</p> <p>18 Q So your only contacts concerning</p> <p>19 this case are with counsel?</p> <p>20 A That's correct. That's correct.</p> <p>21 Mr. Cheng is the only person I have spoken</p> <p>22 to about this case.</p> <p>23 Q Got it. And did you do anything</p> <p>24 to prepare for today?</p> <p>25 A I'm sorry, what was that?</p> | <p style="text-align: right;">Page 16</p> <p>1 J. GANDY</p> <p>2 Mr. Hatch's reports again, which I</p> <p>3 rebutted. That's basically it.</p> <p>4 Q When you say "Mr. Hatch's</p> <p>5 report," did you review both his initial</p> <p>6 expert report and his rebuttal report?</p> <p>7 A Yes, I have.</p> <p>8 Q Okay. Did you review the expert</p> <p>9 -- I'm sorry, strike that. Did you review</p> <p>10 the reports of any other experts in this</p> <p>11 case?</p> <p>12 A No, I have not.</p> <p>13 Q Are you familiar with an</p> <p>14 individual named Lance Rake?</p> <p>15 A No, I'm not.</p> <p>16 Q Do you know whether the</p> <p>17 defendants in this case have retained any</p> <p>18 other experts?</p> <p>19 A I'm not aware of that. I have</p> <p>20 not been told that.</p> <p>21 Q Have you reviewed the accused</p> <p>22 products in this case?</p> <p>23 A I have reviewed them through the</p> <p>24 photographs that I have received.</p> <p>25 Q Have you inspected any physical</p>             |
| <p style="text-align: right;">Page 15</p> <p>1 J. GANDY</p> <p>2 Q Did you do anything to prepare</p> <p>3 for today's deposition?</p> <p>4 A I've gone over my reports, and I</p> <p>5 had just a prep session with Mr. Cheng,</p> <p>6 just to go over some of the questions that</p> <p>7 he felt that I might be asked.</p> <p>8 Q So when did you meet with</p> <p>9 Mr. Cheng?</p> <p>10 A That was last Wednesday, I</p> <p>11 believe it was. Yes.</p> <p>12 Q You just met with Mr. Cheng that</p> <p>13 one time?</p> <p>14 A I met with Mr. Cheng last</p> <p>15 Wednesday. I met with one of his</p> <p>16 colleagues, Iris, I think it's Ju</p> <p>17 yesterday.</p> <p>18 Q And again, did you speak with</p> <p>19 anybody else besides the attorneys about</p> <p>20 this case?</p> <p>21 A No. No, I have not.</p> <p>22 Q And besides your expert reports,</p> <p>23 did you review any other materials in</p> <p>24 preparation for today?</p> <p>25 A Just my reports. I looked at</p>                     | <p style="text-align: right;">Page 17</p> <p>1 J. GANDY</p> <p>2 products?</p> <p>3 A No, I have not.</p> <p>4 Q You have not ridden any of the</p> <p>5 hoverboards?</p> <p>6 A No.</p> <p>7 Q Just kidding. All right. So</p> <p>8 I'm going to bring up what I'm going to</p> <p>9 mark as Exhibit 1, your expert report.</p> <p>10 But before I do that, Mr. Gandy, do you</p> <p>11 have any papers in front of you? Any</p> <p>12 copies of your reports or anything like</p> <p>13 that? I have some portions of the copies</p> <p>14 of my report that I felt maybe I might</p> <p>15 need to refer to, depending on the</p> <p>16 questions that are asked.</p> <p>17 Q Okay. But you don't have a full</p> <p>18 set there with you?</p> <p>19 A No, no I do not.</p> <p>20 Q Okay. So I'm going to go ahead</p> <p>21 and as I go put the exhibits into the chat</p> <p>22 so you can download them. And I can also</p> <p>23 bring them up on the screen so we can look</p> <p>24 at them together.</p> <p>25 A Okay.</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 J. GANDY</p> <p>2 Q If I knew how to do that.</p> <p>3 MR. BERKOWITZ: Sorry, question for</p> <p>4 the court reporter. Am I able to drop</p> <p>5 exhibits into the chat?</p> <p>6 THE REPORTER: So yeah, let me just</p> <p>7 jump in here. Mr. Berkowitz, from what I</p> <p>8 understand, copying and pasting doesn't</p> <p>9 work with the Zoom chat. I mean, if you</p> <p>10 want to share on the screen, you can do</p> <p>11 that. If you want to e-mail them to me, I</p> <p>12 can share them as well.</p> <p>13 MR. BERKOWITZ: No, I'll just share</p> <p>14 them as we go, then. No problem.</p> <p>15 THE REPORTER: Okay.</p> <p>16 BY MR. BERKOWITZ:</p> <p>17 Q Okay. Mr. Gandy, can you see</p> <p>18 that I've shared a document with you?</p> <p>19 A Yes, yes I can.</p> <p>20 Q Okay. I'm going to Zoom out</p> <p>21 just a bit, and I'm going to go ahead and</p> <p>22 mark this as Exhibit 1. I will just</p> <p>23 quickly show you the first page and the</p> <p>24 last page. It's an 86-page document,</p> <p>25 which ends with an Exhibit 1, that's your</p> | <p style="text-align: right;">Page 20</p> <p>1 J. GANDY</p> <p>2 I'm aware of this. Yeah, it was not</p> <p>3 the -- I believe it was not the rebuttal</p> <p>4 report to Mr. Hatch's.</p> <p>5 Q Yes. Do you remember preparing</p> <p>6 this report that we have on the screen</p> <p>7 right now?</p> <p>8 A Sure. Oh, yes.</p> <p>9 Q When did you prepare this</p> <p>10 report?</p> <p>11 A It was in August of last year.</p> <p>12 I believe I finished up on it in early</p> <p>13 September, based on that date, September</p> <p>14 3rd. I seem to remember it was around the</p> <p>15 first of September that I finished it.</p> <p>16 Q Okay. Do you remember the</p> <p>17 context as to why you prepared this</p> <p>18 report?</p> <p>19 A Yes. It was basically for the</p> <p>20 purpose of giving my opinion as to</p> <p>21 noninfringement of the four design patents</p> <p>22 in the case.</p> <p>23 Q Okay. And who drafted this</p> <p>24 report?</p> <p>25 A I did.</p>  |
| <p style="text-align: right;">Page 19</p> <p>1 J. GANDY</p> <p>2 CV. And there is a signature on page 82</p> <p>3 of the document.</p> <p>4 (Exhibit 1 was marked for</p> <p>5 identification.)</p> <p>6 A Sure.</p> <p>7 Q Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Okay. Are you familiar with</p> <p>10 this document?</p> <p>11 A Yes, I am.</p> <p>12 Q And what is this document?</p> <p>13 A It's my rebuttal report on</p> <p>14 noninfringement, rebutting Mr. Hatch's</p> <p>15 report.</p> <p>16 Q I actually don't think it is. I</p> <p>17 think this is a report, a document dated</p> <p>18 September 23, 2021, and I'll represent</p> <p>19 that this was served on us again on August</p> <p>20 16th of 2022 as an opening report. Maybe</p> <p>21 you want to take a few minutes and just</p> <p>22 scroll through. I can start at the top</p> <p>23 and make sure you're familiar with this</p> <p>24 document. Is that all right?</p> <p>25 A Sure, that's fine. Okay. Yeah,</p>  | <p style="text-align: right;">Page 21</p> <p>1 J. GANDY</p> <p>2 Q Okay. Did you draft the report</p> <p>3 in its entirety?</p> <p>4 A Yes, I did.</p> <p>5 Q What was your process for</p> <p>6 drafting the report?</p> <p>7 A Initially just reviewing the</p> <p>8 documents that Mr. Cheng had sent to me</p> <p>9 for the purpose of understanding what the</p> <p>10 case was about and then sending me</p> <p>11 photographs of the alleged infringing</p> <p>12 designs, hoverboard designs. Once I had</p> <p>13 all of those and then was able to</p> <p>14 formulate an opinion, I began to write a</p> <p>15 report.</p> <p>16 Q Okay. You mentioned that you</p> <p>17 had received some documents from counsel.</p> <p>18 Do you recall what those documents were?</p> <p>19 A I think they're listed on there.</p> <p>20 I have in front of me, if you want, I can</p> <p>21 take a look at my report where I've listed</p> <p>22 what I did look at. Obviously, I looked</p> <p>23 at the four design patents. I looked at</p> <p>24 all of the alleged infringing devices. I</p> <p>25 believe I looked at the defendants' motion</p> |

6 (Pages 18 - 21)



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| <p style="text-align: right;">Page 22</p> <p>1 J. GANDY</p> <p>2 for summary judgment.</p> <p>3 Q Okay.</p> <p>4 A And then, obviously, I have it</p> <p>5 on there that I saw, I did look at</p> <p>6 Mr. Hatch's expert report.</p> <p>7 Q Okay. We'll circle back to that</p> <p>8 a little bit later. Did anybody help you</p> <p>9 prepare the report?</p> <p>10 A No.</p> <p>11 Q Did you base the report in any</p> <p>12 way on any prior expert reports?</p> <p>13 A No, no. When you're saying "any</p> <p>14 prior expert reports," are you talking</p> <p>15 about his particular subject matter,</p> <p>16 hoverboards?</p> <p>17 Q Good question. No, I was</p> <p>18 actually asking about any prior expert</p> <p>19 reports that you prepared for other cases?</p> <p>20 A I may have used some of the</p> <p>21 language about my background and what my</p> <p>22 expertise is, and my understanding of the</p> <p>23 law.</p> <p>24 Q Got it. So I note there are</p> <p>25 several reports and declarations that were</p>  | <p style="text-align: right;">Page 24</p> <p>1 J. GANDY</p> <p>2 A I've updated it as far as any of</p> <p>3 the cases that I've been involved in, yes.</p> <p>4 Q Okay. Do you recall the last</p> <p>5 time that you updated the CV?</p> <p>6 A Whatever the last case that I</p> <p>7 was involved in, that would be the last</p> <p>8 time I updated it.</p> <p>9 Q Okay. Besides this particular</p> <p>10 matter between plaintiffs and defendants,</p> <p>11 are you providing expert services in any</p> <p>12 other cases?</p> <p>13 A You mean, have I currently been</p> <p>14 retained in other cases?</p> <p>15 Q Yes.</p> <p>16 A At this time?</p> <p>17 Q Yes, sir.</p> <p>18 A Yes, I've been retained in</p> <p>19 another case that doesn't involve anything</p> <p>20 like this case. But I've been retained in</p> <p>21 another case, yes.</p> <p>22 Q Okay. So I guess let's step</p> <p>23 through your education and background, and</p> <p>24 then we can talk about your testifying</p> <p>25 experience and make sure it's all up-to-</p> |
| <p style="text-align: right;">Page 23</p> <p>1 J. GANDY</p> <p>2 prepared in these cases. If it's all</p> <p>3 right, I just want to refer to this</p> <p>4 document that we've marked as Exhibit 1 as</p> <p>5 your report, your opening report. Is that</p> <p>6 all right with you?</p> <p>7 A Sure. That's fine.</p> <p>8 Q I want to just go all the way to</p> <p>9 the end to your CV. We'll start there</p> <p>10 talking about your background, if that's</p> <p>11 all right.</p> <p>12 A Sure. That's fine.</p> <p>13 Q Okay. So we're now looking at</p> <p>14 Exhibit 1 of we've marked as Exhibit 1,</p> <p>15 Mr. Gandy's opening report, and what</p> <p>16 appears to be his CV. Is that correct?</p> <p>17 A Yes, that's correct.</p> <p>18 Q When did you prepare this CV?</p> <p>19 A I prepared this CV not long</p> <p>20 after I retired from the patent office,</p> <p>21 knowing that I was going to, I was</p> <p>22 interested in doing expert witness work</p> <p>23 and consulting work in design patents. So</p> <p>24 I prepared my CV back in 2005.</p> <p>25 Q Have you updated it since then?</p> | <p style="text-align: right;">Page 25</p> <p>1 J. GANDY</p> <p>2 date.</p> <p>3 THE REPORTER: Counsel, if I could</p> <p>4 interrupt just for one moment. I have</p> <p>5 someone trying to enter in. Queena Zhang.</p> <p>6 MR. BERKOWITZ: It's okay.</p> <p>7 MR. CHENG: Yes. She is with us. If</p> <p>8 you can get her admitted to the session,</p> <p>9 it would be good. Thank you.</p> <p>10 MR. BERKOWITZ: All right. Thank</p> <p>11 you.</p> <p>12 BY MR. BERKOWITZ:</p> <p>13 Q So let's start with your college</p> <p>14 education. It says here you attended</p> <p>15 Temple University. Is that correct?</p> <p>16 A That's correct.</p> <p>17 Q And you received a bachelor of</p> <p>18 science in architectural design</p> <p>19 technology. Is that right?</p> <p>20 A That's correct.</p> <p>21 Q Can you tell us a little bit</p> <p>22 about what type of course work is involved</p> <p>23 in architectural design technology degree?</p> <p>24 A Are you asking me what kind of</p> <p>25 courses I took while I was in college?</p>        |

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| <p style="text-align: right;">Page 26</p> <p>1 J. GANDY</p> <p>2 Q What kind of, well, tell me a</p> <p>3 little bit more about the architectural</p> <p>4 design technology degree and what that --</p> <p>5 in order to obtain that degree, what type</p> <p>6 of course work is required?</p> <p>7 A Well, obviously, engineering</p> <p>8 classes, physics classes, obviously</p> <p>9 architectural design classes, classes like</p> <p>10 perspective and rendering in being about</p> <p>11 to draw renderings and perspectives.</p> <p>12 Urban design, calculus. Again, most of</p> <p>13 the engineering and science courses along</p> <p>14 with the actual architectural courses.</p> <p>15 Q Any product design course work?</p> <p>16 A No, not at that time.</p> <p>17 Q So you graduated from Temple in</p> <p>18 1972; is that correct?</p> <p>19 A That's correct.</p> <p>20 Q And following your graduation</p> <p>21 you went straight to working at the patent</p> <p>22 office?</p> <p>23 A That's correct.</p> <p>24 Q And I will start there with your</p> <p>25 first position at the patent office. And</p>                            | <p style="text-align: right;">Page 28</p> <p>1 J. GANDY</p> <p>2 was transferred over there, I primarily</p> <p>3 worked in the area of transportation, D12.</p> <p>4 I also worked in the area of agricultural</p> <p>5 vehicles. I worked in the area of</p> <p>6 hardware, D8. And I also worked in the</p> <p>7 area of automotive engine parts.</p> <p>8 Q I don't want to interrupt you,</p> <p>9 but I believe you said December of 2002 to</p> <p>10 2003. I'm assuming that's not what you</p> <p>11 meant.</p> <p>12 A Well, December of 2002, January</p> <p>13 2003. I don't remember exactly when. I</p> <p>14 was only in the office about six months</p> <p>15 when that happened.</p> <p>16 Q What I'm saying is, did you mean</p> <p>17 1972 to 1973?</p> <p>18 A Yes. 1972 to 1973. Yes,</p> <p>19 correct.</p> <p>20 Q Okay. And when you were working</p> <p>21 in the class D12, handling class D12</p> <p>22 applications, can you give us some more</p> <p>23 specifics as to what kind of products you</p> <p>24 were seeing?</p> <p>25 A I worked in the entire area of</p>    |
| <p style="text-align: right;">Page 27</p> <p>1 J. GANDY</p> <p>2 that was in 1972; is that right?</p> <p>3 A That's correct, yes.</p> <p>4 Q Okay. So you started as a</p> <p>5 design patent examiner; is that right?</p> <p>6 A That's correct.</p> <p>7 Q And in your own words, what kind</p> <p>8 of patents were you examining when you</p> <p>9 first started in 1972?</p> <p>10 A When I first started, actually I</p> <p>11 was in the area of furnishings, like</p> <p>12 furniture design. The art unit I came</p> <p>13 into in June of 1972 basically had fine</p> <p>14 arts type work, and like I said, I started</p> <p>15 working in D6, which is furnishings,</p> <p>16 mostly furniture.</p> <p>17 In I believe it was December or</p> <p>18 January of 2002-2003, I was transferred to</p> <p>19 the other design art unit in the</p> <p>20 technology center because there was a</p> <p>21 conflict of an examiner who had been</p> <p>22 hired. His brother was in the same art</p> <p>23 unit, and they couldn't do that. So I was</p> <p>24 transferred into what was at that time</p> <p>25 292. Or -- I'm sorry -- 291. And when I</p> | <p style="text-align: right;">Page 29</p> <p>1 J. GANDY</p> <p>2 land transportation, so I worked on</p> <p>3 anything that would be transportation on</p> <p>4 land, like snowmobiles, sleds, bicycles,</p> <p>5 motorcycles, obviously automobiles,</p> <p>6 trucks.</p> <p>7 Q Got it. So you were</p> <p>8 initially -- when you first entered the</p> <p>9 patent office, what was your title?</p> <p>10 A I was an assistant design patent</p> <p>11 examiner.</p> <p>12 Q And at some point, did your</p> <p>13 title change?</p> <p>14 A Yes. The process at the patent</p> <p>15 office for examiners, both design and</p> <p>16 utility, is you come in as an assistant at</p> <p>17 whatever grade you're hired at, and it</p> <p>18 normally takes about six or seven years</p> <p>19 until you have a -- if your work is</p> <p>20 sufficient, adequate -- you have an</p> <p>21 opportunity to be promoted at the end of</p> <p>22 every year.</p> <p>23 Then you get to a point where</p> <p>24 you can, what they call a partial</p> <p>25 signatory review program and then a full</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 J. GANDY</p> <p>2 signatory review program.</p> <p>3 The full signatory review</p> <p>4 program is a six-month program. At the</p> <p>5 end of the six months, supervisors review</p> <p>6 your work and determine whether you have</p> <p>7 adequately made the proper determinations</p> <p>8 on patentability, and if you have, then</p> <p>9 you be promoted to what's called a primary</p> <p>10 examiner. At that point, you have full</p> <p>11 signatory authority to make all decisions</p> <p>12 on patentability.</p> <p>13 Q Understood. It says here, "In</p> <p>14 1979, I was promoted to primary examiner</p> <p>15 and granted full signatory authority."</p> <p>16 A That's correct.</p> <p>17 Q So that's the correct year,</p> <p>18 1979?</p> <p>19 A Yes.</p> <p>20 Q And is it correct that you</p> <p>21 remained as a primary patent examiner all</p> <p>22 the way up through 1996?</p> <p>23 A That's correct, yes.</p> <p>24 Q And between 1979 and 1996, did</p> <p>25 your responsibilities or role change at</p>                               | <p style="text-align: right;">Page 32</p> <p>1 J. GANDY</p> <p>2 A That's correct.</p> <p>3 Q Okay. And how do your</p> <p>4 responsibilities change from a primary</p> <p>5 examiner to a supervisory patent examiner?</p> <p>6 A Well, as a supervisor patent</p> <p>7 examiner, you're the supervisor of an art</p> <p>8 unit that can consist of anywhere from</p> <p>9 about 9 to 12 examiners, and you are</p> <p>10 responsible for those examiners' work.</p> <p>11 And at the end of the fiscal year, you're</p> <p>12 required to do a review and recommendation</p> <p>13 as to whether their work is satisfactory</p> <p>14 or whether it's commendable or whether</p> <p>15 it's outstanding or whether it's</p> <p>16 unsatisfactory.</p> <p>17 Q As a supervisory patent</p> <p>18 examiner, are you still independently</p> <p>19 reviewing design patents, design</p> <p>20 applications?</p> <p>21 A Once as a supervisor, I no</p> <p>22 longer have design patent applications</p> <p>23 that are assigned to me for the purpose of</p> <p>24 examination. I'm examining the examiners,</p> <p>25 assistant examiners, at that point. I'm</p>       |
| <p style="text-align: right;">Page 31</p> <p>1 J. GANDY</p> <p>2 all?</p> <p>3 A As a primary examiner, I mean,</p> <p>4 when I was, at times I would act as the</p> <p>5 supervisor for the art unit when the</p> <p>6 supervisor was away. I was, I trained new</p> <p>7 examiners that came in and reviewed their</p> <p>8 work and made recommendations to the</p> <p>9 supervisor when they were eligible for</p> <p>10 promotion.</p> <p>11 Q Okay. And did you continue to</p> <p>12 review patents in the same classes that we</p> <p>13 discussed?</p> <p>14 A Yes. Yes. At times, at the</p> <p>15 end, towards the end of the fiscal year,</p> <p>16 because there were issues of backlogs of</p> <p>17 cases, I was asked to work in different</p> <p>18 art areas to help move cases along. So</p> <p>19 I've worked in -- I think I've indicated,</p> <p>20 may have indicated in my CV -- I've worked</p> <p>21 in pretty much every design class there</p> <p>22 is.</p> <p>23 Q Okay. And 1996 comes about, and</p> <p>24 you are promoted to a supervisory patent</p> <p>25 examiner? Is that correct?</p> | <p style="text-align: right;">Page 33</p> <p>1 J. GANDY</p> <p>2 reviewing all of their work and signing</p> <p>3 off on their actions if they're correct.</p> <p>4 Q Understood. So your time period</p> <p>5 at the patent office for examining</p> <p>6 applications on your own was from 1972 to</p> <p>7 1996; is that fair?</p> <p>8 A That's correct, yes.</p> <p>9 Q Okay. And you mentioned during</p> <p>10 the earlier period in the supervisor</p> <p>11 training junior examiners?</p> <p>12 A That's correct. Yes.</p> <p>13 Q Can you tell us a little bit</p> <p>14 about how you go about, I guess, training</p> <p>15 a new patent examiner?</p> <p>16 A Well, basically you're training</p> <p>17 them with all of the, on all of the</p> <p>18 elements that they're expected to be able</p> <p>19 to perform as an examiner. And that</p> <p>20 includes examining applications, that</p> <p>21 includes their office actions. But as far</p> <p>22 as their production goes -- because every</p> <p>23 examiner has production. That's based in</p> <p>24 strictly the supervisor's responsibility.</p> <p>25 Q Are there any guidelines that</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 J. GANDY</p> <p>2 the examiners have to follow when they're</p> <p>3 examining a design patent application?</p> <p>4 A Well, yeah. Obviously, they</p> <p>5 have to examine the specification, make</p> <p>6 sure that the specification is accurate</p> <p>7 with respect to the drawings. They have</p> <p>8 to review the drawings to make sure that</p> <p>9 all the views are consistent with each</p> <p>10 other so they meet the requirements of</p> <p>11 definiteness and enablement under</p> <p>12 35 U.S.C. 112.</p> <p>13 They obviously when they're</p> <p>14 looking at prior art, have to be able to</p> <p>15 determine whether the prior art that</p> <p>16 they've found, rendered a claim obvious or</p> <p>17 anticipated, or whether the claim would be</p> <p>18 allowable over that prior art.</p> <p>19 Q Did you train new examiners in</p> <p>20 patent searching?</p> <p>21 A I'm sorry, did I train them in</p> <p>22 searching?</p> <p>23 Q Yes, sir.</p> <p>24 A Yeah. I mean, I would have to</p> <p>25 review, I would -- until they became</p>        | <p style="text-align: right;">Page 36</p> <p>1 J. GANDY</p> <p>2 Chapter 1500, is there any other written</p> <p>3 policies or guidelines that the examiner</p> <p>4 would follow?</p> <p>5 A Well, there's the rules that</p> <p>6 apply to design patents that are in the</p> <p>7 Code of Federal Regulations. And then</p> <p>8 there are the statutes that they have to</p> <p>9 be familiar with what the particular</p> <p>10 sections of the statute are that apply to</p> <p>11 design patents.</p> <p>12 Q Okay. So going back to your CV,</p> <p>13 you were a supervisory patent examiner</p> <p>14 from 1996 to 1998; is that correct?</p> <p>15 A That's correct, yes.</p> <p>16 Q And from there, you were</p> <p>17 elevated to be the design patent practice</p> <p>18 specialist; is that correct?</p> <p>19 A That's correct, yes.</p> <p>20 Q Okay. And you were in that role</p> <p>21 from 1998 to 2005; is that right?</p> <p>22 A That's correct, yes.</p> <p>23 Q And how did your, I guess, job</p> <p>24 responsibilities change as a design patent</p> <p>25 practice specialist?</p>  |
| <p style="text-align: right;">Page 35</p> <p>1 J. GANDY</p> <p>2 familiar with the areas to search, I</p> <p>3 would, you know, give them, you know, the</p> <p>4 areas that would be required to search,</p> <p>5 depending on what the subject matter was.</p> <p>6 Q Okay.</p> <p>7 A They learn very quickly, because</p> <p>8 they normally will be assigned to</p> <p>9 particular art areas, and they learn very</p> <p>10 quickly as to where the actual class and</p> <p>11 subclass searching as well as potential</p> <p>12 publications, where they would need to</p> <p>13 search.</p> <p>14 Q Is there any, I guess, written</p> <p>15 guidelines or policies that the examiner</p> <p>16 would follow in reviewing a new</p> <p>17 application?</p> <p>18 A Well, I mean, the</p> <p>19 Manual of Patent Examining Procedure,</p> <p>20 Chapter 1500, is on design patents. So</p> <p>21 that is where they need to familiarize</p> <p>22 themselves with what the rules and what</p> <p>23 the proper statutes are to be applied in</p> <p>24 examining design patent applications.</p> <p>25 Q But beyond the MPEP,</p> | <p style="text-align: right;">Page 37</p> <p>1 J. GANDY</p> <p>2 A Well, I no longer had the</p> <p>3 responsibility of any examiners as a</p> <p>4 supervisor in an art unit. As the</p> <p>5 practice specialist, I was mainly -- the</p> <p>6 practice specialist position basically</p> <p>7 came into being based on a program that</p> <p>8 the patent office had initiated. Which</p> <p>9 was an in-process review program, in which</p> <p>10 practice specialists would review the</p> <p>11 office actions of all examiners in the</p> <p>12 entire technology center to determine</p> <p>13 whether the actions that they had taken</p> <p>14 were correct. I would have to review</p> <p>15 those applications and then prepare a</p> <p>16 report on all of the elements that would</p> <p>17 be required for the examiner to do in each</p> <p>18 of these cases.</p> <p>19 I also was in charge of training</p> <p>20 all new examiners that were, that came</p> <p>21 into the office. And then I was</p> <p>22 responsible for continued education</p> <p>23 training for all design patent examiners</p> <p>24 in the technology center. I was in charge</p> <p>25 of reviewing all of the decisions that</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 J. GANDY</p> <p>2 were coming back from the board of appeals</p> <p>3 and the court of appeals for the federal</p> <p>4 circuit, to determine whether there were</p> <p>5 any issues that needed to be addressed.</p> <p>6 I was in charge of preparing the</p> <p>7 design patent examiner supplemental</p> <p>8 training guide, which was strictly a</p> <p>9 training material that was for design</p> <p>10 patent examiners.</p> <p>11 Q Okay. The design examiners</p> <p>12 supplemental training guide, was that a</p> <p>13 publicly issued document, or was that an</p> <p>14 internal document.</p> <p>15 A No. No, it was an in-office</p> <p>16 document. All of the materials that I</p> <p>17 would prepare for that particular document</p> <p>18 had to go through the office of the</p> <p>19 assistant commissioner on policy and</p> <p>20 procedure to make sure everything that I</p> <p>21 was indicating as far as dealing with</p> <p>22 different issues under the statutes or</p> <p>23 under the rules were correct.</p> <p>24 Q Okay. So after 2005, did you</p> <p>25 retire from the patent office?</p> | <p style="text-align: right;">Page 40</p> <p>1 J. GANDY</p> <p>2 to file with the patent office, and I was</p> <p>3 contacted on occasions by law firms,</p> <p>4 knowing that I was a retired design patent</p> <p>5 examiner and was interested in doing</p> <p>6 expert witness work.</p> <p>7 So I would get contacted from</p> <p>8 time to time by law firms that had design</p> <p>9 patents that were either in litigation or</p> <p>10 were the defendants in actions that were</p> <p>11 being taken, based on design patents.</p> <p>12 Q Okay. So let's break that down.</p> <p>13 It sounds like at least a portion of the</p> <p>14 time, you were doing consulting work for</p> <p>15 law firms; is that fair?</p> <p>16 A I wasn't, I mean, I wasn't</p> <p>17 retained by them, but I was -- there were</p> <p>18 some design patent agents that had</p> <p>19 contacted me while I was at the patent</p> <p>20 office about design patent practice, knew</p> <p>21 I was retiring and were interested in</p> <p>22 having me review design patent</p> <p>23 applications that they were going to file</p> <p>24 with the patent office to make sure that</p> <p>25 they were in proper order.</p> |
| <p style="text-align: right;">Page 39</p> <p>1 J. GANDY</p> <p>2 A Yes, I retired in 2005, yes.</p> <p>3 Q Okay. And so your career at the</p> <p>4 patent office spanned 1972 to 2005; is</p> <p>5 that right?</p> <p>6 A That's correct, yes.</p> <p>7 Q And your time personally</p> <p>8 examining patents was from 1972 to 1996;</p> <p>9 is that fair?</p> <p>10 A That's correct, yes.</p> <p>11 Q Okay. And during your time at</p> <p>12 the patent office, were you ever</p> <p>13 performing noninfringement analysis or</p> <p>14 infringement analysis?</p> <p>15 A No. That's not an issue that</p> <p>16 is, is, that the patent office is there</p> <p>17 for.</p> <p>18 Q Okay. And after 2005 when you</p> <p>19 retired from the USPTO, what did you do</p> <p>20 next?</p> <p>21 A Well, after I retired, I again</p> <p>22 prepared my CV. I had some patent agents</p> <p>23 and attorneys that knew I was retiring and</p> <p>24 wanted to rely on me for reviewing design</p> <p>25 patent applications that they were going</p>  | <p style="text-align: right;">Page 41</p> <p>1 J. GANDY</p> <p>2 Q Okay. So looking at your CV,</p> <p>3 there's a heading here, it says "Design</p> <p>4 Patent Consulting." Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Can you see me mouse?</p> <p>7 A Sure.</p> <p>8 Q Okay. That'll make this easier.</p> <p>9 Great. So this first sentence under that</p> <p>10 heading, which I've just attempted to</p> <p>11 highlight, it says, "Since retiring from</p> <p>12 the USPTO, I have on occasion counseled</p> <p>13 patent attorneys and agents in their</p> <p>14 filings of design patent applications at</p> <p>15 the United States Patent and Trademark</p> <p>16 Office." Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Okay. So that was more informal</p> <p>19 assistance?</p> <p>20 A Yes. Yes. It was just merely</p> <p>21 where I would review the applications that</p> <p>22 they had prepared to make sure that they</p> <p>23 were in all the proper formal matters.</p> <p>24 And it involved reviewing the drawings,</p> <p>25 making sure they were consistent, you</p>  |

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| <p style="text-align: right;">Page 42</p> <p>1 J. GANDY</p> <p>2 know, for purposes of definiteness and</p> <p>3 enablement.</p> <p>4 Q Okay. You weren't officially</p> <p>5 working for any of these law firms in</p> <p>6 particular?</p> <p>7 A No, no. No, I have never --</p> <p>8 since I've retired, I've never actually</p> <p>9 been retained as an employee of any law</p> <p>10 firm.</p> <p>11 Q Understood. And then if we keep</p> <p>12 reading in your CV, it says, "I have also</p> <p>13 prepared expert reports and testified in a</p> <p>14 deposition and at trial as an expert</p> <p>15 witness in the following matters." Is</p> <p>16 that right?</p> <p>17 A That's correct, yes.</p> <p>18 Q Okay. And we'll go through</p> <p>19 them. There's a list of six different</p> <p>20 matters that follow. Do you see that?</p> <p>21 A Yes. Sure.</p> <p>22 Q Is this list up to date?</p> <p>23 A Yes, it is.</p> <p>24 Q So this includes, does this</p> <p>25 include all your current engagements?</p>   | <p style="text-align: right;">Page 44</p> <p>1 J. GANDY</p> <p>2 attorneys who were representing Ford.</p> <p>3 There was a series of design patents on</p> <p>4 the Ford Mustang -- I believe it was the</p> <p>5 2005 Ford Mustang -- that were being</p> <p>6 challenged as being indefinite and</p> <p>7 nonenabling. And I prepared reports on</p> <p>8 that, the drawings that I considered to be</p> <p>9 adequate and were not indefinite or</p> <p>10 nonenabling.</p> <p>11 Q Okay. Besides enablement and</p> <p>12 definiteness, was there any other areas of</p> <p>13 patent law that you testified in that</p> <p>14 case?</p> <p>15 A No, no.</p> <p>16 Q Okay. And do you recall the</p> <p>17 outcome of that case?</p> <p>18 A Yes. The defendant wound up</p> <p>19 settling, and Ford entered into a</p> <p>20 licensing agreement with the defendants to</p> <p>21 make after-market panels. Body panels.</p> <p>22 Basically, crash panels, if a car gets in</p> <p>23 an accident.</p> <p>24 Q And did you end up testifying at</p> <p>25 a hearing in that case?</p> |
| <p style="text-align: right;">Page 43</p> <p>1 J. GANDY</p> <p>2 A No, no. I normally only add a</p> <p>3 case to my CV once the work is done,</p> <p>4 because I don't know how many reports I'll</p> <p>5 have to do or when I'll have to give a</p> <p>6 deposition or testify at trial. So I</p> <p>7 normally wait until after my work being</p> <p>8 retained as an expert is finished.</p> <p>9 Q Understood. Just to clarify,</p> <p>10 are there any other matters in which</p> <p>11 you've already submitted an expert report?</p> <p>12 A No, no.</p> <p>13 Q That's fine. Okay. So just if</p> <p>14 we could quickly go through the -- the</p> <p>15 first matter listed here says, "Complaint</p> <p>16 of Ford Global Technologies, LLC." You</p> <p>17 see that?</p> <p>18 A Yes.</p> <p>19 Q And is that an ITC matter?</p> <p>20 A Yes, it was. Yeah.</p> <p>21 Q Okay. What was your role in</p> <p>22 that case?</p> <p>23 A I was retained in that case</p> <p>24 because the patents -- I was retained on</p> <p>25 behalf of, representing, you know, the</p> | <p style="text-align: right;">Page 45</p> <p>1 J. GANDY</p> <p>2 A No, no.</p> <p>3 Q Were you deposed in that case?</p> <p>4 A No, I was not.</p> <p>5 Q Okay. So after you prepared the</p> <p>6 expert report, the case was resolved? Is</p> <p>7 that fair?</p> <p>8 A Yes, yes.</p> <p>9 Q Okay. All right, moving on to</p> <p>10 the next case, Magnadyne Corp. v.</p> <p>11 Best Buy. Do you see that?</p> <p>12 A Yes, yes.</p> <p>13 Q And what was your role in that</p> <p>14 case?</p> <p>15 A That was, basically my role was</p> <p>16 to prepare a report indicating that the</p> <p>17 design patent was patentable under 102 and</p> <p>18 103, and that the alleged infringing</p> <p>19 device was infringing.</p> <p>20 Q So is it fair to say you</p> <p>21 prepared a report on validity and</p> <p>22 infringement?</p> <p>23 A Yes, it was validity. That's</p> <p>24 what it was. Validity, yes.</p> <p>25 Q Was it infringement as well?</p>   |



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| <p style="text-align: right;">Page 46</p> <p>1 J. GANDY</p> <p>2 A Yeah, I believe it was. To the</p> <p>3 best of my recollection, I also indicated</p> <p>4 that the alleged infringing device was</p> <p>5 infringing.</p> <p>6 Q It says here you gave a</p> <p>7 deposition on expert report.</p> <p>8 A Yes, I did.</p> <p>9 Q Okay. And did you testify at</p> <p>10 trial in that case?</p> <p>11 A No.</p> <p>12 Q Did the case go to trial?</p> <p>13 A No. It was settled.</p> <p>14 Q Okay. All right. Moving to the</p> <p>15 next one, Weber-Stephen Products v.</p> <p>16 Sears Holdings Corp. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q And it says here that you</p> <p>19 prepared an expert report on invalidity as</p> <p>20 well as nonenabling. Let me just sum it</p> <p>21 up. It says you prepared a report on</p> <p>22 invalidity, issue of enablement,</p> <p>23 indefiniteness, and the written</p> <p>24 description requirement. Is that fair?</p> <p>25 A That's correct, yes.</p>  | <p style="text-align: right;">Page 48</p> <p>1 J. GANDY</p> <p>2 settle.</p> <p>3 Q Okay. So the case settled after</p> <p>4 summary judgment?</p> <p>5 A Yes.</p> <p>6 Q So you were only deposed in the</p> <p>7 case? You did not testify at trial?</p> <p>8 A That's correct, yes.</p> <p>9 Q Okay. Moving on to the next</p> <p>10 case. It's Trinity Manufacturing,</p> <p>11 Campbell Soup Company and Campbell Sales</p> <p>12 Company v. Gamon Plus. Do you see that?</p> <p>13 A Yes.</p> <p>14 Q What type of case was that?</p> <p>15 A That was actually on, I believe</p> <p>16 it was five design patents directed to --</p> <p>17 trying to think of what the correct term</p> <p>18 would be. They were basically for the</p> <p>19 holders for Campbell Soup Cans or just any</p> <p>20 soup cans that would be in supermarkets.</p> <p>21 And it involved a series of design patents</p> <p>22 on certain portions of the retainer.</p> <p>23 These were cases that were before the</p> <p>24 patent office for inter-parties reviews</p> <p>25 before the patent trial board.</p> |
| <p style="text-align: right;">Page 47</p> <p>1 J. GANDY</p> <p>2 Q Okay. And then it says that you</p> <p>3 separately prepared an expert report on</p> <p>4 noninfringement to design patents?</p> <p>5 A That's correct.</p> <p>6 Q Is that right?</p> <p>7 A That's correct.</p> <p>8 Q Okay. Were those two separate</p> <p>9 reports that you prepared in that case?</p> <p>10 A Yes, they were separate reports,</p> <p>11 yes.</p> <p>12 Q So you were representing the --</p> <p>13 A I was representing Sears, the</p> <p>14 defendant. That's correct.</p> <p>15 Q And what was the outcome in that</p> <p>16 case?</p> <p>17 A There were two design patents</p> <p>18 involved. One was on an entire grill; the</p> <p>19 other was on just the shroud, the cover</p> <p>20 for the grill. The cover was -- it was</p> <p>21 determined that the cover was not</p> <p>22 infringing. It was a summary judgment.</p> <p>23 The judge did not grant the summary</p> <p>24 judgment to Sears. Sears decided not to</p> <p>25 go forward to trial. They decided to just</p> | <p style="text-align: right;">Page 49</p> <p>1 J. GANDY</p> <p>2 Q And you were representing which</p> <p>3 party?</p> <p>4 A The defendant. I was</p> <p>5 representing Campbell, the defendants.</p> <p>6 Q When you say "the defendants,"</p> <p>7 you mean, were they the parties bringing</p> <p>8 the requests for review? Or --</p> <p>9 A Yeah. They were the parties</p> <p>10 bringing the request for inter-parties</p> <p>11 review.</p> <p>12 Q So your declaration would be</p> <p>13 supporting the invalidity of these</p> <p>14 patents; is that fair?</p> <p>15 A That's correct, yes.</p> <p>16 Q Okay. And you were deposed in</p> <p>17 those IPRs?</p> <p>18 A That's correct, yes.</p> <p>19 Q Okay. And do you recall the</p> <p>20 outcome of the IPRs?</p> <p>21 A I know four of the design</p> <p>22 patents were invalidated. I think the one</p> <p>23 is still, I think has still not been</p> <p>24 settled.</p> <p>25 Q Okay. Moving on to this case,</p>  |

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| <p style="text-align: right;">Page 50</p> <p>1 J. GANDY</p> <p>2 Nite Glow Industries, I Did It, Inc., and</p> <p>3 Marni Markell Hurwitz v. Central Garden &amp;</p> <p>4 Pet Company and Four Paws Pet Company. Do</p> <p>5 you see that?</p> <p>6 A Yes.</p> <p>7 Q Same questions. What type of</p> <p>8 issues were involved in there?</p> <p>9 A This was a -- I was asked to</p> <p>10 prepare a report on expedited examination</p> <p>11 process in this case. The Nite Glow --</p> <p>12 well, let me say, Marni Markell was an</p> <p>13 individual. She holds multiple number of</p> <p>14 utility patents. And she came to Nite</p> <p>15 Glow with an idea for, well, she had a</p> <p>16 utility patent for basically dispensing</p> <p>17 tick and flea, you know, into dogs and</p> <p>18 cats.</p> <p>19 Nite Glow filed design patent</p> <p>20 applications off of her utility patent</p> <p>21 without her knowledge. And so she brought</p> <p>22 suit against them. They were issued the</p> <p>23 design patents without her knowledge.</p> <p>24 So the suit was based on, she</p> <p>25 had a written secrecy agreement with</p> | <p style="text-align: right;">Page 52</p> <p>1 J. GANDY</p> <p>2 on several occasions because she is very</p> <p>3 frustrated about the legal process that is</p> <p>4 going on. So that's the only way I know</p> <p>5 that there are still some legal issues</p> <p>6 being involved in that case.</p> <p>7 Q Okay. And the last one is the,</p> <p>8 I believe it's LKQ Corporation and</p> <p>9 Keystone Automotive v. GM Global</p> <p>10 Technology Operations. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And that's another inter-parties</p> <p>13 suit?</p> <p>14 A Inter-parties, yes. It was</p> <p>15 inter-parties, and post grant reviews.</p> <p>16 Q So there, too, you were</p> <p>17 representing which side?</p> <p>18 A LKQ. LKQ.</p> <p>19 Q Okay. So you were providing</p> <p>20 declarations in support of invalidity? Is</p> <p>21 that fair?</p> <p>22 A That's correct, yes.</p> <p>23 Q So just to sum up the, your</p> <p>24 expert -- let me strike that. To sum up</p> <p>25 your expert experience, you've had a total</p> |
| <p style="text-align: right;">Page 51</p> <p>1 J. GANDY</p> <p>2 Nite Glow that they obviously violated.</p> <p>3 And so I was asked to prepare a</p> <p>4 report on an expedited examination,</p> <p>5 because if they had properly prepared</p> <p>6 design applications and filed them as</p> <p>7 expedited examinations, they would have</p> <p>8 received their patent much earlier. And</p> <p>9 basically, the case was for the purpose</p> <p>10 of, these patents should have been</p> <p>11 assigned to her.</p> <p>12 Q Okay. And just to confirm, you</p> <p>13 were representing which parties in this</p> <p>14 case?</p> <p>15 A Marni Markell.</p> <p>16 Q And in this case, you gave both</p> <p>17 deposition and trial testimony?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And do you recall the</p> <p>20 outcome of that case?</p> <p>21 A The initial outcome is that she</p> <p>22 was awarded the decision in the case. My</p> <p>23 understanding is that there are still some</p> <p>24 legal issues going on with that. I have</p> <p>25 not, I have had some -- she has called me</p>                                    | <p style="text-align: right;">Page 53</p> <p>1 J. GANDY</p> <p>2 of six cases, and in one case, you</p> <p>3 provided opinions with respect to</p> <p>4 infringement, and in one case, you</p> <p>5 provided opinions with respect to</p> <p>6 noninfringement. Is that fair?</p> <p>7 A That's correct, yes.</p> <p>8 Q Got it. Okay.</p> <p>9 A If you had to sum up for us,</p> <p>10 what do you believe your area of expertise</p> <p>11 is?</p> <p>12 MR. CHENG: Objection. Vague and</p> <p>13 ambiguous.</p> <p>14 A What is my area of expertise?</p> <p>15 Is that what you're asking me?</p> <p>16 Q Yes, sir.</p> <p>17 A I consider myself an expert on</p> <p>18 design patents in all areas of the subject</p> <p>19 matter.</p> <p>20 Q During your time at the patent</p> <p>21 office, did you ever review any patents</p> <p>22 relating to hoverboards?</p> <p>23 A Hoverboards didn't even exist</p> <p>24 when I retired from the patent office.</p> <p>25 Q That's true. Fair enough. Were</p>  |



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| <p style="text-align: right;">Page 54</p> <p>1 J. GANDY</p> <p>2 there -- strike that. Did you review any</p> <p>3 patents or patent applications related to</p> <p>4 self-balancing vehicles?</p> <p>5 A I can't recall offhand. I don't</p> <p>6 know, the only -- I'm trying to think of</p> <p>7 the name. I can't think of the name of</p> <p>8 the self-balancing vehicle, the first one</p> <p>9 that came out, but I was not examining at</p> <p>10 that point. I think there was a design</p> <p>11 patent application filed on that, but I</p> <p>12 was not actually examining. I was a</p> <p>13 supervisor at that point.</p> <p>14 Q Yeah. And again, I don't know</p> <p>15 what the earliest one was, but I think it</p> <p>16 was something like a Segway.</p> <p>17 A Segway. That's what I'm trying</p> <p>18 to think of. Segway. Yeah, when the</p> <p>19 Segways came out, I was, I believe there</p> <p>20 was a design patent filed on that, but at</p> <p>21 that time, again, I was a supervisor. I</p> <p>22 would've been examining it if I had still</p> <p>23 been the examiner in that art area.</p> <p>24 Q Understood. Okay. Why don't we</p> <p>25 -- yeah, we've done about an hour. Why</p> | <p style="text-align: right;">Page 56</p> <p>1 J. GANDY</p> <p>2 (Exhibit 2 was marked for</p> <p>3 identification.)</p> <p>4 A Yes.</p> <p>5 Q Okay. And do you recognize this</p> <p>6 document?</p> <p>7 A Yes, I do.</p> <p>8 Q And what do you recognize it to</p> <p>9 be?</p> <p>10 A It's the last declaration that I</p> <p>11 had prepared in rebuttal to Mr. Hatch's</p> <p>12 last report.</p> <p>13 Q Okay. When did you prepare this</p> <p>14 declaration?</p> <p>15 A It was late August, early</p> <p>16 September.</p> <p>17 Q And how does this document</p> <p>18 differ from your prior declaration that we</p> <p>19 marked as Exhibit 1?</p> <p>20 A There was one additional alleged</p> <p>21 infringing hoverboard that was identified</p> <p>22 as, I believe, group E.</p> <p>23 Q And did you address that group E</p> <p>24 hoverboard?</p> <p>25 A Yes, I did.</p>   |
| <p style="text-align: right;">Page 55</p> <p>1 J. GANDY</p> <p>2 don't we just take five minutes before we</p> <p>3 dive into the rest of your report; okay?</p> <p>4 A Okay, sure.</p> <p>5 MR. CHENG: Can we take ten minutes?</p> <p>6 MR. BERKOWITZ: Yeah, sure. No</p> <p>7 problem.</p> <p>8 MR. CHENG: Thanks.</p> <p>9 THE REPORTER: We are off the record</p> <p>10 at 10:59 a.m.</p> <p>11 (Off the record.)</p> <p>12 THE REPORTER: All right, counsel, we</p> <p>13 are back on the record at 11:09 a.m.</p> <p>14 BY MR. BERKOWITZ:</p> <p>15 Q Okay. So I'm going to go ahead</p> <p>16 and mark a second document that I will</p> <p>17 share on the screen. Mr. Gandy, can you</p> <p>18 see that I've shared a document?</p> <p>19 A Yes.</p> <p>20 Q Great. So I'm going to mark</p> <p>21 this as Exhibit Number 2, and let me,</p> <p>22 again, just scroll quickly through this</p> <p>23 86-page document. This is the first page,</p> <p>24 the table of contents, and here is your</p> <p>25 signature at the end. Do you see that?</p>   | <p style="text-align: right;">Page 57</p> <p>1 J. GANDY</p> <p>2 Q And other than provided analysis</p> <p>3 of the group E hoverboard, were there any</p> <p>4 other changes made to the report?</p> <p>5 A I think I may have added some</p> <p>6 additional language with respect to claim</p> <p>7 construction and maybe some additional</p> <p>8 language as to my opinion of Mr. Hatch's</p> <p>9 report.</p> <p>10 Q So the same questions I asked</p> <p>11 before. Did you draft this report</p> <p>12 yourself?</p> <p>13 A Yes, I did.</p> <p>14 Q And those additions that you</p> <p>15 just mentioned, did you make those changes</p> <p>16 yourself?</p> <p>17 A Yes, I did.</p> <p>18 Q Did anyone ask you to make those</p> <p>19 specific changes?</p> <p>20 A No, they did not.</p> <p>21 Q And if it's okay, I'm going to</p> <p>22 refer to this report, Exhibit Number 2, as</p> <p>23 your rebuttal report. Is that all right</p> <p>24 with you?</p> <p>25 A Yes, that's fine.</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 J. GANDY</p> <p>2 Q Okay. So Exhibit 1 is your</p> <p>3 initial report, Exhibit Number 2 is your</p> <p>4 rebuttal report. Okay?</p> <p>5 A Okay.</p> <p>6 Q All right. So I want to, I</p> <p>7 guess, start with the list of materials,</p> <p>8 which is paragraph 4 of the report. Do</p> <p>9 you see that?</p> <p>10 A Yes.</p> <p>11 Q And other than the materials</p> <p>12 listed here, is there anything else that</p> <p>13 you relied upon in preparing this report?</p> <p>14 A No, not that I'm aware of or I</p> <p>15 recall.</p> <p>16 Q Okay. I asked the question</p> <p>17 before if you were familiar with the</p> <p>18 individual named Lance Rake, which I</p> <p>19 understand you said that you were not</p> <p>20 familiar with Mr. Rake.</p> <p>21 A No. No.</p> <p>22 Q And just to confirm -- and I</p> <p>23 apologize if I asked before -- have you</p> <p>24 reviewed any declarations or reports</p> <p>25 prepared by Mr. Rake?</p>                                | <p style="text-align: right;">Page 60</p> <p>1 J. GANDY</p> <p>2 Q Prior to this engagement, were</p> <p>3 you familiar with the standards for</p> <p>4 infringement of design patent?</p> <p>5 A Yes, I was.</p> <p>6 Q Okay. And how were you familiar</p> <p>7 with those standards?</p> <p>8 A Well, I'm familiar with the case</p> <p>9 law, Egyptian Goddess, that basically sets</p> <p>10 out what the proper standard is for</p> <p>11 determining infringement, based on the</p> <p>12 ordinary observer.</p> <p>13 Q And when was the</p> <p>14 Egyptian Goddess case issued?</p> <p>15 A I believe it was 2007, 2007 or</p> <p>16 2008. I know it was right in that time</p> <p>17 frame.</p> <p>18 Q Okay. I believe it was 2008,</p> <p>19 but I agree with you, it's around that</p> <p>20 time period. At that time, you had</p> <p>21 already retired from the patent office; is</p> <p>22 that right?</p> <p>23 A That's correct. Yeah.</p> <p>24 Q Okay. So during your time at</p> <p>25 the patent office, was there a -- what was</p>   |
| <p style="text-align: right;">Page 59</p> <p>1 J. GANDY</p> <p>2 A No, I have not.</p> <p>3 Q Okay. All right. So let's jump</p> <p>4 over to paragraph 19 of your report. So</p> <p>5 I'm in Section III of the report. It's</p> <p>6 titled "Understanding of the Applicable</p> <p>7 Legal Principles." Do you see that?</p> <p>8 A Yes, I do.</p> <p>9 Q Is this a section of the report</p> <p>10 that you prepared for this case?</p> <p>11 A Yes, sure. Yeah.</p> <p>12 Q Was this section drawn from</p> <p>13 prior cases? And when I say "prior</p> <p>14 cases," I mean not relating to the parties</p> <p>15 here?</p> <p>16 A I believe so. They're very</p> <p>17 similar language, yes.</p> <p>18 Q Okay. Now looking at paragraph</p> <p>19 19, in the third sentence of the</p> <p>20 paragraph, it says, "In rendering my</p> <p>21 analysis, I have been informed by counsel</p> <p>22 for multiple defendants the legal</p> <p>23 standards for infringement of a design</p> <p>24 patent." Do you see that?</p> <p>25 A Yes.</p> | <p style="text-align: right;">Page 61</p> <p>1 J. GANDY</p> <p>2 the standard for design patent</p> <p>3 infringement?</p> <p>4 A Basically, it was the</p> <p>5 Supreme Court decision, Gorham v. White.</p> <p>6 I think it was 1876. It was still the</p> <p>7 standard. Actually, I should also include</p> <p>8 in there, I think it was the -- trying to</p> <p>9 remember the specific case -- but</p> <p>10 basically, you're dealing with points of</p> <p>11 novelty. That's what the case, basically</p> <p>12 the Egyptian Goddess case eliminated the</p> <p>13 point of novelty test.</p> <p>14 Q Can you tell us a little bit</p> <p>15 about the point of novelty test?</p> <p>16 MR. CHENG: Objection, vague and</p> <p>17 ambiguous. But you may answer if you</p> <p>18 understand the question.</p> <p>19 THE WITNESS: Yeah. I remember</p> <p>20 reading -- and again, I'm trying to</p> <p>21 remember the specific parties involved in</p> <p>22 it, but I remember reading the decision</p> <p>23 that established the point of novelty test</p> <p>24 when I was an examiner. I believe it was</p> <p>25 somewhere in the early '80s when that</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 J. GANDY</p> <p>2 decision came down.</p> <p>3 Basically, it was saying that,</p> <p>4 you know, in addition to the ordinary</p> <p>5 observer test set out by the</p> <p>6 Gorham v. White decision, that you had to</p> <p>7 meet, in order to be considered to</p> <p>8 infringe, you had to have shown all of the</p> <p>9 points of novelty of the design patent in</p> <p>10 litigation.</p> <p>11 Q Was the points of novelty test</p> <p>12 also being applied in the patentability</p> <p>13 context?</p> <p>14 A You mean as far as determining</p> <p>15 patentability in the patent office?</p> <p>16 Q Right.</p> <p>17 A No, no.</p> <p>18 Q As a patent examiner, what was</p> <p>19 the test that you were applying to</p> <p>20 determine the patentability?</p> <p>21 A Well, it was either the</p> <p>22 anticipation or obviousness from prior art</p> <p>23 standpoint.</p> <p>24 Q Okay. But it wasn't the</p> <p>25 Egyptian Goddess test; is that fair?</p>   | <p style="text-align: right;">Page 64</p> <p>1 J. GANDY</p> <p>2 be decisions that potentially came from</p> <p>3 the trial board at the patent office.</p> <p>4 Q Are there any particular</p> <p>5 decisions that you're relying upon here</p> <p>6 for these opinions?</p> <p>7 A No, no.</p> <p>8 Q Okay. And the same question,</p> <p>9 you're referring in this first sentence of</p> <p>10 paragraph 20 to "articles." Is there any</p> <p>11 particular articles that you're relying</p> <p>12 upon in connection with these opinions?</p> <p>13 A Well, I mean, it says "articles</p> <p>14 discussing design patent law principles."</p> <p>15 I mean, that would basically be the</p> <p>16 Manual of Patent Examining Procedure and</p> <p>17 the statutes.</p> <p>18 Q Okay. Is there any particular</p> <p>19 portions of the Manual of Patent Examining</p> <p>20 Procedure that are relevant to the</p> <p>21 infringement analysis that you provided</p> <p>22 here?</p> <p>23 A Not with respect to</p> <p>24 infringement, no.</p> <p>25 Q Okay. So moving on to the</p> |
| <p style="text-align: right;">Page 63</p> <p>1 J. GANDY</p> <p>2 A No. The Egyptian Goddess test</p> <p>3 is dealing with infringement. Which is</p> <p>4 not an issue that the patent office deals</p> <p>5 with.</p> <p>6 Q Okay. Jumping to paragraph 20</p> <p>7 of your rebuttal report, the first</p> <p>8 sentence says, "Based on my conversations</p> <p>9 with counsel for multiple defendants and</p> <p>10 my review of administrative decisions and</p> <p>11 articles discussing design patent law</p> <p>12 principles, I have the following</p> <p>13 understanding of design patent</p> <p>14 infringement." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Okay. So when you say</p> <p>17 "administrative decisions," what are you</p> <p>18 referring to?</p> <p>19 A Well, it would be decisions from</p> <p>20 the courts on infringement.</p> <p>21 Q Are those administrative</p> <p>22 decisions?</p> <p>23 A No, they're actually legal</p> <p>24 decisions. Administrative decisions, I</p> <p>25 would have to say that they're, they would</p> | <p style="text-align: right;">Page 65</p> <p>1 J. GANDY</p> <p>2 second sentence of paragraph 20 [sic], it</p> <p>3 says, "First, it is my understanding that</p> <p>4 the claim in a design patent application</p> <p>5 is directed to the entire design and not</p> <p>6 individual parts or elements thereof." Do</p> <p>7 you see that?</p> <p>8 A Yes.</p> <p>9 Q Do you believe that that is a</p> <p>10 correct summary of the law?</p> <p>11 A Yes, oh, absolutely. That's</p> <p>12 what it is for determining patentability.</p> <p>13 Q Okay. And if we continue</p> <p>14 reading, it says, "In addition, it is my</p> <p>15 understanding that the proper inquiry in</p> <p>16 determining if a patented design has been</p> <p>17 infringed is whether the accused design</p> <p>18 appropriates the claim design as a whole."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Is that sentence similar to the</p> <p>22 one we just read?</p> <p>23 A I think it's similar, yes.</p> <p>24 Q And in general, what does that</p> <p>25 sentence telling us?</p>        |

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| <p style="text-align: right;">Page 66</p> <p>1 J. GANDY</p> <p>2 A It's telling us that</p> <p>3 infringement is based on the appearance of</p> <p>4 the design as a whole.</p> <p>5 Q Okay. And if we keep reading,</p> <p>6 it says, "Further, it is my understanding</p> <p>7 that design patent infringement is</p> <p>8 determined by first construing the claim</p> <p>9 to the design and then comparing it to the</p> <p>10 design of the accused device." Do you see</p> <p>11 that?</p> <p>12 A That's correct, yes.</p> <p>13 Q Okay. So how do we construe a</p> <p>14 design patent claim?</p> <p>15 A Basically, everything that's</p> <p>16 shown in solid lines is considered to be</p> <p>17 part of the claim design. Anything that</p> <p>18 would be in broken lines is considered to</p> <p>19 be unclaimed or environment.</p> <p>20 Q Okay. And if we keep reading,</p> <p>21 it says, "It's also my understanding that</p> <p>22 in construing the claim, a design is</p> <p>23 better represented by an illustration</p> <p>24 rather than a verbal description, since</p> <p>25 any description would not likely be</p> | <p style="text-align: right;">Page 68</p> <p>1 J. GANDY</p> <p>2 Q Do you know if defendants are</p> <p>3 offering a verbal description of the claim</p> <p>4 designs in this case?</p> <p>5 MR. CHENG: Objection. Are you --</p> <p>6 well, first if it's privileged information</p> <p>7 counsel is looking for privileged</p> <p>8 information with communication with</p> <p>9 clients, then I instruct the witness, the</p> <p>10 deponent not to answer that. To the</p> <p>11 extent that the question is vague and</p> <p>12 ambiguous, maybe counsel can rephrase it.</p> <p>13 MR. BERKOWITZ: Sure.</p> <p>14 BY MR. BERKOWITZ:</p> <p>15 Q Just to clarify, I'm certainly</p> <p>16 not looking for any privileged</p> <p>17 communications that you had with your</p> <p>18 attorneys. I'm just asking the question,</p> <p>19 do you know whether the defendants have</p> <p>20 offered a verbal description of the claim</p> <p>21 designs in connection with the case?</p> <p>22 A Not that I recall.</p> <p>23 Q Okay. And in your expert</p> <p>24 report, do you provide any verbal</p> <p>25 descriptions of the claim designs?</p>                                  |
| <p style="text-align: right;">Page 67</p> <p>1 J. GANDY</p> <p>2 intelligible without the illustration."</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q And what are you trying to say</p> <p>6 there?</p> <p>7 A What I'm trying to say is that,</p> <p>8 you -- a design claim protects the overall</p> <p>9 shape and appearance of an article of</p> <p>10 manufacture. And it would be almost</p> <p>11 impossible to describe by words the</p> <p>12 specific shape and appearance of a claim</p> <p>13 design without actually seeing a picture</p> <p>14 of it.</p> <p>15 If I had a word description --</p> <p>16 let's put it this way. If I had a word</p> <p>17 description of a claim design, I'd have to</p> <p>18 be able to draw that and look exactly what</p> <p>19 the drawings show. That is very, very</p> <p>20 unlikely.</p> <p>21 Q Do you believe it's helpful to</p> <p>22 provide a verbal description of a claim</p> <p>23 design?</p> <p>24 A I don't think so. My opinion is</p> <p>25 no.</p>  | <p style="text-align: right;">Page 69</p> <p>1 J. GANDY</p> <p>2 A No. I guess the only thing I</p> <p>3 would say is that a verbal description</p> <p>4 would be just, just given a description of</p> <p>5 what the different views that, you know,</p> <p>6 comparing the alleged infringing devices</p> <p>7 to the claim design and to the closest</p> <p>8 prior art. I mean, I wouldn't consider</p> <p>9 anything I've said to be a written</p> <p>10 description. It's merely just looking at</p> <p>11 the pictures.</p> <p>12 Q Okay. I guess my question is</p> <p>13 how do you draw the line? What would you</p> <p>14 consider a verbal description of a claim</p> <p>15 design?</p> <p>16 MR. CHENG: Objection. Form.</p> <p>17 A Again, I would have to say, it</p> <p>18 would have to be a description that would</p> <p>19 be so specific to define particular shape</p> <p>20 and appearance of a claim design that I</p> <p>21 could read that description and actually</p> <p>22 draw the claim design as shown in the</p> <p>23 drawings. And again, it's my opinion that</p> <p>24 that's virtually impossible.</p> <p>25 Q Okay. And just to clarify, you</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 J. GANDY</p> <p>2 have not tried to construe the claims</p> <p>3 here, other than based on the drawings; is</p> <p>4 that fair?</p> <p>5 A That's correct.</p> <p>6 Q Okay. You mentioned the</p> <p>7 ordinary observer test earlier. Is that</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q What's the role of prior art, if</p> <p>11 any, in the ordinary observer test?</p> <p>12 A Well, it's my understanding,</p> <p>13 based on the Egyptian Goddess decision,</p> <p>14 that if the claim design and the alleged</p> <p>15 infringing design are not so similar, so</p> <p>16 dissimilar, that it would be necessary to</p> <p>17 look at the closest prior art in assisting</p> <p>18 in making a determination as to whether a</p> <p>19 less infringing design actually infringes</p> <p>20 the claim design.</p> <p>21 Q How do you go about determining</p> <p>22 what's the closest prior art?</p> <p>23 A Again, that's a visual</p> <p>24 determination. And I would be looking at,</p> <p>25 you know, earlier hoverboards.</p> | <p style="text-align: right;">Page 72</p> <p>1 J. GANDY</p> <p>2 Q Okay. Is that -- and just to</p> <p>3 clarify, is that something that you ever</p> <p>4 came across in your time as a patent</p> <p>5 examiner?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Okay. Did you have any</p> <p>8 experience with anyone applying that</p> <p>9 principle in design patent analysis?</p> <p>10 A What principle is that?</p> <p>11 Q The Gestalt principle.</p> <p>12 A I don't know what that is.</p> <p>13 Q Okay. I'm just going to bring</p> <p>14 up another exhibit for us for a moment.</p> <p>15 Okay. Can you see that I've brought up</p> <p>16 another document?</p> <p>17 A Okay.</p> <p>18 Q I'm going to mark as Exhibit 3 a</p> <p>19 document that is titled</p> <p>20 "Expert Declaration of Lance Rake," and I</p> <p>21 will note that it's a document consisting</p> <p>22 of 113 pages, including an Exhibit 1.</p> <p>23 Again, Mr. Gandy, can you see</p> <p>24 the document?</p> <p>25 //</p>  |
| <p style="text-align: right;">Page 71</p> <p>1 J. GANDY</p> <p>2 Q Anything else?</p> <p>3 A That would be, I think, you</p> <p>4 know, if whatever potential earlier prior</p> <p>5 art hoverboards would be in existing at</p> <p>6 the time, that would be what I would</p> <p>7 consider to be the closest prior art.</p> <p>8 Q Is making that determination</p> <p>9 just based on your experience?</p> <p>10 A Yes, yes.</p> <p>11 Q And in performing the ordinary</p> <p>12 observer analysis, are there any</p> <p>13 scientific principles that you rely upon?</p> <p>14 A No, no.</p> <p>15 Q Are you familiar with the term</p> <p>16 "gestalt"?</p> <p>17 A Gestalt?</p> <p>18 Q Yes, sir. I can spell that for</p> <p>19 you.</p> <p>20 A No, that's fine. I'm not</p> <p>21 familiar with that term.</p> <p>22 Q Just for my own edification,</p> <p>23 it's spelled G-E-S-T-A-L-T. Are you</p> <p>24 familiar with that term?</p> <p>25 A No.</p>   | <p style="text-align: right;">Page 73</p> <p>1 J. GANDY</p> <p>2 (Exhibit 3 was marked for</p> <p>3 identification.)</p> <p>4 A Yes, I can.</p> <p>5 Q Okay. Is this a document that</p> <p>6 you've seen before?</p> <p>7 A No, I have not.</p> <p>8 Q Okay. And I'll just represent</p> <p>9 to you that this is a document that the</p> <p>10 defendants have served in this case. And</p> <p>11 I want to go ahead and ask you to scroll</p> <p>12 to paragraph 10 of this document.</p> <p>13 MR. CHENG: I will raise my</p> <p>14 objection, since neither Mr. Gandy or the</p> <p>15 counsel was given a copy of this document,</p> <p>16 and we have had no sufficient time to look</p> <p>17 through the documents, are you testifying</p> <p>18 this is one report that was provided by</p> <p>19 defendant?</p> <p>20 MR. BERKOWITZ: Yes. I will</p> <p>21 represent this is a report that was served</p> <p>22 on us by your firm on behalf of the</p> <p>23 defendants.</p> <p>24 MR. CHENG: Can you show us a date so</p> <p>25 at least we know which report you're</p> |



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| <p style="text-align: right;">Page 74</p> <p>1 J. GANDY</p> <p>2 putting here?</p> <p>3 MR. BERKOWITZ: Absolutely. This is</p> <p>4 a document, you can see the signature is</p> <p>5 dated September 12, 2022.</p> <p>6 MR. CHENG: Okay. And I just want to</p> <p>7 caution you that give us sufficient time</p> <p>8 to look through the portion of the report</p> <p>9 if you want to read any specific part of</p> <p>10 the report.</p> <p>11 MR. BERKOWITZ: Sure.</p> <p>12 MR. CHENG: Thanks.</p> <p>13 BY MR. BERKOWITZ:</p> <p>14 Q Sure. Let's start at paragraph</p> <p>15 6 of this report. And I'll give you a</p> <p>16 moment to read through, and then I'll just</p> <p>17 ask you a question or two about it. Just</p> <p>18 let me know when you're done.</p> <p>19 A Okay, I've gone through six</p> <p>20 through eight.</p> <p>21 Q Okay. You might as well just</p> <p>22 finish reading through nine and ten, if</p> <p>23 that's all right with you.</p> <p>24 A Uh-huh, sure.</p> <p>25 Q Thanks.</p>  | <p style="text-align: right;">Page 76</p> <p>1 J. GANDY</p> <p>2 first paragraph, paragraph 10, this</p> <p>3 individual, Mr. Rake, says, "I</p> <p>4 specifically selected Gestalt Perception</p> <p>5 Theory as a scientific framework for</p> <p>6 determining whether or not the design of</p> <p>7 the accused products is equivalent to that</p> <p>8 of the asserted patents." Do you see</p> <p>9 that?</p> <p>10 A Yes.</p> <p>11 Q Is that scientific framework</p> <p>12 something that you've used to train</p> <p>13 examiners?</p> <p>14 MR. CHENG: Objection, calls for a</p> <p>15 legal conclusion. Well, it's not a legal</p> <p>16 conclusion. Calls for speculation.</p> <p>17 MR. BERKOWITZ: I'm just asking about</p> <p>18 Mr. Gandy's experience.</p> <p>19 THE WITNESS: Would you repeat the</p> <p>20 question again?</p> <p>21 BY MR. BERKOWITZ:</p> <p>22 Q Sure. Is the scientific</p> <p>23 framework that's referred to here in these</p> <p>24 paragraphs, is that something that you've</p> <p>25 used to train examiners on design</p> |
| <p style="text-align: right;">Page 75</p> <p>1 J. GANDY</p> <p>2 A Okay.</p> <p>3 Q There's just one last paragraph</p> <p>4 in this section, paragraph 11, if you</p> <p>5 don't mind. Just take a look at that.</p> <p>6 A Okay.</p> <p>7 Q Okay. Having read paragraphs 6</p> <p>8 through 11 of Exhibit Number 3, does this</p> <p>9 give you an understanding of the Gestalt</p> <p>10 principles we're referring to?</p> <p>11 A Yeah. I mean I can generally</p> <p>12 understand what they're saying, yeah.</p> <p>13 Q Okay. And is the Gestalt</p> <p>14 principles something that you would use in</p> <p>15 patent office practice?</p> <p>16 MR. CHENG: Objection. Asked and</p> <p>17 answered.</p> <p>18 A I wouldn't necessarily say --</p> <p>19 I'm not familiar with this Gestalt</p> <p>20 principle, but I think a lot of what it</p> <p>21 says is what we do at the patent office.</p> <p>22 I mean, as far as me looking at the claim</p> <p>23 design and comparing it to the prior art.</p> <p>24 Obviously, it's a visual comparison.</p> <p>25 Q Okay. So here in, let's say</p> | <p style="text-align: right;">Page 77</p> <p>1 J. GANDY</p> <p>2 analysis?</p> <p>3 A Not any specific reference to</p> <p>4 Gestalt perception, no.</p> <p>5 Q Okay. I want to scroll down to</p> <p>6 paragraph 27 of this report. If you could</p> <p>7 just take a moment and read this</p> <p>8 paragraph.</p> <p>9 A Okay. Just paragraph 7?</p> <p>10 Q Twenty-seven, yes.</p> <p>11 A Twenty-seven, I'm sorry. Just</p> <p>12 paragraph 27?</p> <p>13 Q Yes, sir.</p> <p>14 A Okay.</p> <p>15 Q So the last sentence of this</p> <p>16 paragraph says, "As explained below, it is</p> <p>17 my opinion that the ordinary observer,</p> <p>18 familiar with the prior art, would find</p> <p>19 the accused products' overall appearance</p> <p>20 to be substantially different with respect</p> <p>21 to the design claims of the patents-in-</p> <p>22 suite because the overall Gestalt of the</p> <p>23 accused product differs in key areas from</p> <p>24 the body of prior art and the claims of</p> <p>25 the patents-in-suit." Do you see that?</p>     |

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| <p style="text-align: right;">Page 78</p> <p>1 J. GANDY</p> <p>2 A Yes.</p> <p>3 Q Do you have an understanding as</p> <p>4 to what is being referenced here?</p> <p>5 A Well, other than referencing</p> <p>6 this term "Gestalt," I mean, that's</p> <p>7 effectively what I would, I would, you</p> <p>8 know, do. I mean, I've never applied a</p> <p>9 particular principle to it. But, you</p> <p>10 know, that's basically what I do as far as</p> <p>11 examining the claim design and the alleged</p> <p>12 infringing devices. It's what I would do</p> <p>13 when I was an examiner comparing the claim</p> <p>14 design to the prior art.</p> <p>15 Q Okay. Would you focus on the</p> <p>16 perimeter of a product, or would you focus</p> <p>17 on the design as a whole?</p> <p>18 A I would focus on the design as a</p> <p>19 whole.</p> <p>20 Q Okay. Let's go back to your</p> <p>21 rebuttal report, Exhibit Number 2. And</p> <p>22 let's talk about your comments here on</p> <p>23 Mr. Hatch's report.</p> <p>24 So starting, looking at</p> <p>25 paragraph 22, it says, "In his expert</p>           | <p style="text-align: right;">Page 80</p> <p>1 J. GANDY</p> <p>2 MR. BERKOWITZ: Well, I'll challenge</p> <p>3 you on that, Robin. I mean, Mr. Gandy's</p> <p>4 referencing conversations in this report</p> <p>5 as a basis for his opinions. I'd like to</p> <p>6 understand what his basis is for believing</p> <p>7 that Mr. Hatch's opinion is not consistent</p> <p>8 with the Court of Appeals of the Federal</p> <p>9 Circuit.</p> <p>10 MR. CHENG: Again, if you're asking</p> <p>11 for privileged communication, then I</p> <p>12 advise deponent not to answer that. But</p> <p>13 to the extent that the deponent thinks</p> <p>14 that he can't answer the question without</p> <p>15 revealing any privileged communication,</p> <p>16 Mr. Gandy can go ahead and answer the</p> <p>17 question.</p> <p>18 THE WITNESS: So could you repeat the</p> <p>19 question again?</p> <p>20 BY MR. BERKOWITZ:</p> <p>21 Q Sure, sure. So what is the</p> <p>22 basis for your understanding that</p> <p>23 Mr. Hatch's opinion, as far as the</p> <p>24 ordinary observer, is not consistent with</p> <p>25 the standards set forth by the Court of</p>  |
| <p style="text-align: right;">Page 79</p> <p>1 J. GANDY</p> <p>2 report, Mr. Hatch asserts, 'Based on my</p> <p>3 experience as an industrial designer of</p> <p>4 commercial products, it is my opinion that</p> <p>5 an ordinary observer in this case is the</p> <p>6 typical purchaser of hoverboards, i.e., a</p> <p>7 consumer, user, or the parent of a user,</p> <p>8 each having little or no experience</p> <p>9 purchasing hoverboards.'" Do you see</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q Okay. And if we continue</p> <p>13 reading, it says, "However, based on my</p> <p>14 conversations with counsel for multiple</p> <p>15 defendants, this opinion by Mr. Hatch is</p> <p>16 not consistent with the 'hypothetical</p> <p>17 ordinary observer who is conversant in the</p> <p>18 prior art standard' articulated by the</p> <p>19 Court of Appeals for the Federal Circuit."</p> <p>20 Do you see that?</p> <p>21 A Yes. What are you referencing</p> <p>22 here when you say your "conversations with</p> <p>23 counsel"?</p> <p>24 MR. CHENG: Objection. Privileged</p> <p>25 communication.</p> | <p style="text-align: right;">Page 81</p> <p>1 J. GANDY</p> <p>2 Appeals of the Federal Circuit?</p> <p>3 A Well, I think based on, you</p> <p>4 know, just some brief discussions that I</p> <p>5 had with Mr. Cheng to make sure that we're</p> <p>6 both on the same page as far as our</p> <p>7 understanding as to what the ordinary</p> <p>8 observer is -- I mean, having been</p> <p>9 familiar with the Egyptian Goddess case</p> <p>10 and having experience even as an examiner,</p> <p>11 reviewing opinions from the Court of</p> <p>12 Appeals for the Federal Circuit dealing</p> <p>13 with infringement, I'm just familiar with</p> <p>14 what the hypothetical ordinary observer</p> <p>15 standard is supposed to be. And I think</p> <p>16 Mr. Hatch is selling the ordinary observer</p> <p>17 very short as far as what their knowledge</p> <p>18 would be about the prior art.</p> <p>19 Q Okay. So what do you believe</p> <p>20 that the knowledge of the ordinary</p> <p>21 observer would be?</p> <p>22 A I think the ordinary observer</p> <p>23 would be, based on the case law in</p> <p>24 Egyptian Goddess, is someone who is</p> <p>25 familiar with the prior art of the subject</p> |

21 (Pages 78 - 81)



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| <p style="text-align: right;">Page 82</p> <p>1 J. GANDY</p> <p>2 matter that they might be looking to</p> <p>3 purchase.</p> <p>4 Q So you believe the ordinary</p> <p>5 observer is someone that's familiar with</p> <p>6 the prior art?</p> <p>7 A Yes.</p> <p>8 Q Anything more than that?</p> <p>9 MR. CHENG: Objection. Form.</p> <p>10 A No, I think, I think it's</p> <p>11 basically just the ordinary observer is,</p> <p>12 the ordinary observer is a person who</p> <p>13 would be looking to purchase a particular</p> <p>14 product and would have some knowledge of</p> <p>15 what the prior art, what's in the prior</p> <p>16 art for that particular subject matter.</p> <p>17 Q And this paragraph 22, you say,</p> <p>18 "Therefore, in this instance, it remains</p> <p>19 my opinion that an 'ordinary observer' is</p> <p>20 a potential purchaser who is familiar with</p> <p>21 hoverboards and their different designs."</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q What do you consider a potential</p> <p>25 purchaser?</p>   | <p style="text-align: right;">Page 84</p> <p>1 J. GANDY</p> <p>2 A No, that's fine. Okay.</p> <p>3 Q You've read all the way through?</p> <p>4 A Yes. Well, okay, hang on a</p> <p>5 second. Let me just finish.</p> <p>6 Q Please.</p> <p>7 A Okay.</p> <p>8 Q Okay. So you've now read</p> <p>9 through paragraph 23 of your rebuttal</p> <p>10 report. Is that right?</p> <p>11 A Yes.</p> <p>12 Q Okay. And is it fair to say</p> <p>13 that you're critiquing Mr. Hatch's</p> <p>14 opinions?</p> <p>15 A Yes.</p> <p>16 Q Okay. And you're saying that</p> <p>17 Mr. Hatch's report does not adequately</p> <p>18 describe the claim designs and the accused</p> <p>19 products? Is that fair?</p> <p>20 A That's correct.</p> <p>21 Q Okay. And is it fair to say</p> <p>22 that you believe that Mr. Hatch should go</p> <p>23 a step further and describe the designs in</p> <p>24 greater detail?</p> <p>25 A Yeah. I think he should have</p>   |
| <p style="text-align: right;">Page 83</p> <p>1 J. GANDY</p> <p>2 A Well, I think it would be</p> <p>3 someone who would be looking to possibly</p> <p>4 buy a hoverboard. I think it would be the</p> <p>5 same thing -- the potential purchaser</p> <p>6 would be somebody who is interested in</p> <p>7 buying a particular product. Could be an</p> <p>8 automobile, could be a watch, could be a</p> <p>9 piece of furniture. And I think it's</p> <p>10 somebody who would have knowledge of</p> <p>11 what's in the prior art.</p> <p>12 Q So in this sentence that we're</p> <p>13 looking at, you say, "a potential</p> <p>14 purchaser who is familiar with hoverboards</p> <p>15 and their different designs." So by</p> <p>16 "hoverboards and their different designs,"</p> <p>17 are you referring to the prior art?</p> <p>18 A Yes.</p> <p>19 Q Okay. So let's keep scrolling</p> <p>20 down to see paragraph 23. If you don't</p> <p>21 mind, if you could just take a moment to</p> <p>22 read paragraph 23, it might be quicker</p> <p>23 than me reading sentence by sentence. I'm</p> <p>24 happy to scroll whenever you're ready. I</p> <p>25 can also make it bigger, if you'd like.</p> | <p style="text-align: right;">Page 85</p> <p>1 J. GANDY</p> <p>2 gone ahead and described something more</p> <p>3 than just the, just the generic features</p> <p>4 of the hoverboard. Because that's all he</p> <p>5 did. He didn't describe specific</p> <p>6 differences in the appearance of a number</p> <p>7 of the features that comprise the design</p> <p>8 as a whole.</p> <p>9 Q So in essence, are you asking</p> <p>10 him to provide a verbal description of the</p> <p>11 claim design?</p> <p>12 A No, no. I'm asking him just to</p> <p>13 identify features that actually</p> <p>14 distinguish the overall appearance of one</p> <p>15 over the other.</p> <p>16 Q Well, if you're asking for</p> <p>17 specific shapes, isn't that asking for a</p> <p>18 description of the design?</p> <p>19 A When you say "specific shape,"</p> <p>20 I'm just saying that he has -- he has</p> <p>21 referenced the, I believe what I'm</p> <p>22 referring to in there is, he's referenced</p> <p>23 the wheel covers just as being, I think</p> <p>24 something like circular radii. Where the</p> <p>25 wheel covers have different configurations</p> |

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| <p style="text-align: right;">Page 86</p> <p>1 J. GANDY</p> <p>2 between these designs. I think they need</p> <p>3 to be identified. That's what</p> <p>4 distinguishes one over the other.</p> <p>5 Q So you would suggest describing,</p> <p>6 for example, the wheel covers in greater</p> <p>7 detail?</p> <p>8 A No. I'm saying that he should</p> <p>9 look at the wheel covers and indicate what</p> <p>10 the difference is in the shape of them.</p> <p>11 Q And is it your opinion that</p> <p>12 Mr. Hatch should do that for each element</p> <p>13 of the claim design?</p> <p>14 A I think when you're looking at a</p> <p>15 claim design that's shown in full lines,</p> <p>16 you have to look at all of the features</p> <p>17 and details of the claim design.</p> <p>18 Q And for the --</p> <p>19 A That's what makes up the overall</p> <p>20 appearance of it.</p> <p>21 Q And for the elements that are</p> <p>22 shown in dashed lines, do you also need to</p> <p>23 describe those in greater detail?</p> <p>24 A Not if they're not being</p> <p>25 claimed.</p> | <p style="text-align: right;">Page 88</p> <p>1 J. GANDY</p> <p>2 906 patent?</p> <p>3 A Yes.</p> <p>4 Q That's a prior art reference.</p> <p>5 Is that fair?</p> <p>6 A Right, right.</p> <p>7 Q Okay. So what elements are</p> <p>8 indicated in this, in the 906 patent?</p> <p>9 A What -- you mean what elements</p> <p>10 are actually shown in the drawing?</p> <p>11 Q Yes, sir.</p> <p>12 A Okay. I mean, you're showing</p> <p>13 the body of the hoverboard, and you're</p> <p>14 showing in broken lines wheel covers that</p> <p>15 are, that extend over the ends of the</p> <p>16 hoverboard, even though they're not being</p> <p>17 claimed.</p> <p>18 Q So as far as these wheel covers</p> <p>19 -- is it fair if I call them fenders? Are</p> <p>20 those features that are actually indicated</p> <p>21 in the 906 patent?</p> <p>22 A They're not being claimed, but</p> <p>23 they're being disclosed.</p> <p>24 Q Okay. As far as the wheels of</p> <p>25 the 906 patent, are those also being</p> |
| <p style="text-align: right;">Page 87</p> <p>1 J. GANDY</p> <p>2 Q What if it's in the prior art</p> <p>3 that there are elements in dashed lines?</p> <p>4 How do you treat those as part of the</p> <p>5 analysis?</p> <p>6 A The prior art can be relied on</p> <p>7 for everything that it discloses. It does</p> <p>8 not have to just be limited to what is</p> <p>9 actually claimed as the design.</p> <p>10 Q Let me ask you -- jump ahead</p> <p>11 just for a second and ask you a question</p> <p>12 about that statement. I'm going to go</p> <p>13 ahead and advance to paragraph 31 of your</p> <p>14 rebuttal report. So I'm in paragraph 31</p> <p>15 of your rebuttal report at the top of page</p> <p>16 13. Do you see that?</p> <p>17 A Yeah. I mean, I can't see the</p> <p>18 paragraph.</p> <p>19 Q Yeah. I'm just going to ask you</p> <p>20 a question about the pictures.</p> <p>21 A Okay.</p> <p>22 Q So on the top right, here, do</p> <p>23 you see a picture of a hoverboard?</p> <p>24 A Sure.</p> <p>25 Q You understand that's from the</p>               | <p style="text-align: right;">Page 89</p> <p>1 J. GANDY</p> <p>2 disclosed?</p> <p>3 A Yeah, sure they're being</p> <p>4 disclosed. Yeah.</p> <p>5 Q Okay. And we can rely on them</p> <p>6 for what we see here? Is that your</p> <p>7 position?</p> <p>8 A I think the wheels in that</p> <p>9 instance are, you know, obviously are not</p> <p>10 showing any thickness to them. So I mean,</p> <p>11 he's just basically showing what would be</p> <p>12 the shape of a wheel.</p> <p>13 Q And what would that shape be?</p> <p>14 A Circular.</p> <p>15 Q As opposed to the many square</p> <p>16 wheels that we come across. I'm not</p> <p>17 trying to be sarcastic. But is there</p> <p>18 anything else to, any other shapes of the</p> <p>19 wheels that we can glean from the drawings</p> <p>20 of the 906 patent?</p> <p>21 A Of the wheels?</p> <p>22 Q Yes, sir.</p> <p>23 A No.</p> <p>24 Q Okay. And as far as the, what I</p> <p>25 called the fenders, I believe you called</p>                       |

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| <p style="text-align: right;">Page 90</p> <p>1 J. GANDY</p> <p>2 it something else, sorry --</p> <p>3 A The wheel covers.</p> <p>4 Q The wheel covers. Can you</p> <p>5 describe what shape is shown for the wheel</p> <p>6 covers?</p> <p>7 A Yeah. The wheel covers are</p> <p>8 basically semi-circular.</p> <p>9 Q And beyond the wheel covers</p> <p>10 being semi-circular, is there any other</p> <p>11 information that we can draw as far as</p> <p>12 their features?</p> <p>13 A No.</p> <p>14 Q Okay.</p> <p>15 A No. I guess, one other thing I</p> <p>16 would say is, based on the broken lines,</p> <p>17 they actually extend over the actual</p> <p>18 wheels themselves.</p> <p>19 Q So they have a -- the wheel</p> <p>20 covers would have a larger inside radius,</p> <p>21 inside diameter, than the diameter of the</p> <p>22 wheels? Is that fair?</p> <p>23 A Yeah. They extend over the</p> <p>24 wheels. They actually cover portions of</p> <p>25 the wheels. About half of them.</p>  | <p style="text-align: right;">Page 92</p> <p>1 J. GANDY</p> <p>2 commercial market based on my review of</p> <p>3 various websites such as Walmart, Target,</p> <p>4 Best Buy, and Amazon." Did I read that</p> <p>5 correctly?</p> <p>6 A Yes.</p> <p>7 Q Okay. So when you reference</p> <p>8 here a "generic description," do you</p> <p>9 recall what that is?</p> <p>10 A Yeah, sure. It's -- I mean,</p> <p>11 he's describing basically the peripheral</p> <p>12 shape as an hourglass, which is basically</p> <p>13 what all the hoverboards on the commercial</p> <p>14 market are of this style. He's describing</p> <p>15 that you have flat foot plates, which</p> <p>16 again, basically is describing every</p> <p>17 hoverboard on the commercial market. He's</p> <p>18 describing a circular -- I can't remember,</p> <p>19 I have it right here in front of me -- it</p> <p>20 says, "a relatively flat surface across</p> <p>21 the top of the main body, arched covers</p> <p>22 over the wheel area, large radial area on</p> <p>23 the front and back of the underside, and</p> <p>24 elongated light panels on the front</p> <p>25 surface." Those are basically describing,</p>                     |
| <p style="text-align: right;">Page 91</p> <p>1 J. GANDY</p> <p>2 Q Let me just go back to where we</p> <p>3 were. I'm just going to skip ahead a bit</p> <p>4 to paragraph 26 of your report and just</p> <p>5 give you a moment, sir, to refresh your</p> <p>6 recollection. It's a long paragraph. If</p> <p>7 you could just take a look through, and</p> <p>8 I'll scroll. I just want to ask you about</p> <p>9 a particular statement further in.</p> <p>10 A If you want to keep scrolling</p> <p>11 down so I can continue.</p> <p>12 Q Sure, sure.</p> <p>13 A Okay, keep scrolling down.</p> <p>14 Okay.</p> <p>15 Q Okay. I'm going to ask you a</p> <p>16 question about -- I'm going to try to</p> <p>17 highlight it, this statement over here.</p> <p>18 Can you see where the highlight is?</p> <p>19 A Yes.</p> <p>20 Q Great. I'll just read that.</p> <p>21 We're in, again, paragraph 26 of the</p> <p>22 rebuttal report, and it says, "The fact of</p> <p>23 the matter is, the generic description</p> <p>24 used by Mr. Hatch in his declaration</p> <p>25 describes most of the hoverboards on the</p> | <p style="text-align: right;">Page 93</p> <p>1 J. GANDY</p> <p>2 other than maybe the last part, the</p> <p>3 elongated light panels, because not every</p> <p>4 hoverboard has light panels. But</p> <p>5 virtually every other thing he's</p> <p>6 describing there is describing virtually</p> <p>7 the same shape of every hoverboard that's</p> <p>8 on the commercial market in this style.</p> <p>9 Q On the market as of what year?</p> <p>10 A I don't have any particular, you</p> <p>11 know, I don't have any particular</p> <p>12 knowledge of what year. I'm just saying</p> <p>13 when I've looked at hoverboards on these</p> <p>14 different websites, they all generally</p> <p>15 have that same, you know, body shape. And</p> <p>16 this goes back to the 906 patent. That</p> <p>17 was the first hoverboard, and basically</p> <p>18 every other hoverboard has copied that</p> <p>19 hourglass shape.</p> <p>20 Q Right. When you say here you're</p> <p>21 referring to "the commercial market based</p> <p>22 on my review of various websites," when</p> <p>23 did you review those websites?</p> <p>24 A Over the course of time since</p> <p>25 last year, since I started working on this</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 J. GANDY</p> <p>2 case, just for my own knowledge, I looked</p> <p>3 at different websites to see what, how</p> <p>4 many hoverboards are out there and what</p> <p>5 the different styles are.</p> <p>6 Q Do you know what the priority</p> <p>7 dates of the asserted patents are?</p> <p>8 A Of the four design patents?</p> <p>9 Q Yeah. The earliest of the</p> <p>10 asserted patents.</p> <p>11 A Oh. I don't have it right</p> <p>12 offhand.</p> <p>13 Q Do you know if that's 2014?</p> <p>14 A Again, I'd have to look at the</p> <p>15 patent to see. I don't recall right</p> <p>16 offhand whether that's correct. I'll</p> <p>17 assume that what you told me is correct.</p> <p>18 Q Sure. I'll just do it to save</p> <p>19 some time. I'll represent that the</p> <p>20 earliest design patent claims a priority</p> <p>21 in 2014; okay? Do you know what the</p> <p>22 commercial market looked like, going back</p> <p>23 to 2014?</p> <p>24 A I don't know.</p> <p>25 MR. BERKOWITZ: Why don't we just</p> | <p style="text-align: right;">Page 96</p> <p>1 J. GANDY</p> <p>2 about your opinions here. Why don't I</p> <p>3 just give you a moment to read through the</p> <p>4 paragraph.</p> <p>5 A Okay.</p> <p>6 Q Okay. So earlier, I think that</p> <p>7 we agreed that the ordinary observer would</p> <p>8 be someone that's familiar with the prior</p> <p>9 art. Is that fair?</p> <p>10 A Sure.</p> <p>11 Q Okay. And here again, you say,</p> <p>12 "It remains my opinion that an 'ordinary</p> <p>13 observer' is a potential purchaser who is</p> <p>14 familiar with hoverboards and their</p> <p>15 different designs." Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Do you have any opinion as to</p> <p>18 how familiar that ordinary observer would</p> <p>19 be with hoverboards and their different</p> <p>20 designs?</p> <p>21 A I mean, I can't say, you know,</p> <p>22 specifically. I would just say that they</p> <p>23 have, they have a knowledge of prior art</p> <p>24 hoverboards in that they have features</p> <p>25 that distinguish them over each other</p> |
| <p style="text-align: right;">Page 95</p> <p>1 J. GANDY</p> <p>2 take a five-minute break?</p> <p>3 MR. CHENG: Okay. That works for me.</p> <p>4 THE REPORTER: We are off the record</p> <p>5 at 11:57 a.m.</p> <p>6 (Off the record.)</p> <p>7 THE REPORTER: We are back on the</p> <p>8 record at 12:04 p.m.</p> <p>9 BY MR. BERKOWITZ:</p> <p>10 Q Okay. So back after a short</p> <p>11 break. I'm just going to share my screen</p> <p>12 again. Mr. Gandy, can you see that I've</p> <p>13 shared my screen?</p> <p>14 A Yes, yes.</p> <p>15 Q Okay. So we're looking -- I</p> <p>16 have now flipped to paragraph 28 of your</p> <p>17 rebuttal report. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And it's under Section VI,</p> <p>20 entitled "The Ordinary Observer." Do you</p> <p>21 see that?</p> <p>22 A Yes.</p> <p>23 Q Okay. So we spoke a bit before</p> <p>24 about the ordinary observer. I just</p> <p>25 wanted to ask you a few more questions</p>   | <p style="text-align: right;">Page 97</p> <p>1 J. GANDY</p> <p>2 beyond just the hourglass peripheral shape</p> <p>3 of them.</p> <p>4 Q So you have an opinion as to</p> <p>5 whether potential purchasers take into</p> <p>6 account consumer reviews in making a</p> <p>7 decision as to which hoverboard to</p> <p>8 purchase?</p> <p>9 MR. CHENG: Objection. Misstatement</p> <p>10 of deponent's testimony.</p> <p>11 MR. BERKOWITZ: I don't believe I've</p> <p>12 asked him that question before. I'm</p> <p>13 asking him whether he has an opinion or</p> <p>14 not. But you can state your objection.</p> <p>15 THE WITNESS: An opinion on whether a</p> <p>16 purchaser would be looking at reviews?</p> <p>17 MR. BERKOWITZ: Yes.</p> <p>18 THE WITNESS: Product reviews?</p> <p>19 MR. BERKOWITZ: Correct.</p> <p>20 THE WITNESS: Sure. I think that's</p> <p>21 reasonable.</p> <p>22 BY MR. BERKOWITZ:</p> <p>23 Q Okay. What about brands? Do</p> <p>24 you think a consumer of hoverboards would</p> <p>25 be looking at what brand is offering the</p>               |

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| <p style="text-align: right;">Page 98</p> <p>1 J. GANDY</p> <p>2 hoverboard?</p> <p>3 A I would assume they're probably</p> <p>4 familiar with what brands might be out</p> <p>5 there.</p> <p>6 Q Do you have an opinion as to</p> <p>7 whether the branding would impact the</p> <p>8 consumer's choice as to which hoverboard</p> <p>9 to select?</p> <p>10 MR. CHENG: Objection. Calls for</p> <p>11 speculation.</p> <p>12 THE WITNESS: Could you repeat the</p> <p>13 question again?</p> <p>14 MR. BERKOWITZ: Could the court</p> <p>15 reporter read it back?</p> <p>16 THE REPORTER: Sure. One moment.</p> <p>17 (The reporter read the record as</p> <p>18 requested.)</p> <p>19 THE REPORTER: That was the</p> <p>20 question.</p> <p>21 THE WITNESS: It's possible.</p> <p>22 BY MR. BERKOWITZ:</p> <p>23 Q Okay. All right. Looking</p> <p>24 through this paragraph 28, here you say --</p> <p>25 THE REPORTER: I'm sorry, if you</p>   | <p style="text-align: right;">Page 100</p> <p>1 J. GANDY</p> <p>2 A Yes.</p> <p>3 Q And just to clarify. Actually,</p> <p>4 let me clarify, it says "the specific</p> <p>5 shape and appearance of the foot pads on</p> <p>6 the top surface of the hoverboard." Okay?</p> <p>7 A Yes.</p> <p>8 Q And by "top surface," what are</p> <p>9 you referring to?</p> <p>10 A I'm referring to basically the</p> <p>11 two opposing foot pads or the foot</p> <p>12 surfaces where a person would stand on the</p> <p>13 hoverboard.</p> <p>14 Q Okay. And you also mention that</p> <p>15 a potential purchaser would look at</p> <p>16 "whether the front and rear surfaces have</p> <p>17 LED lights or not." Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And just to clarify, when you</p> <p>20 say "front and rear surfaces," you're</p> <p>21 referring to the surfaces that are</p> <p>22 perpendicular to the top surface?</p> <p>23 A Yes.</p> <p>24 Q Okay. And with respect to those</p> <p>25 LED lights, you say that a consumer,</p>  |
| <p style="text-align: right;">Page 99</p> <p>1 J. GANDY</p> <p>2 could just share your screen again.</p> <p>3 MR. BERKOWITZ: Oh, I'm sorry.</p> <p>4 BY MR. BERKOWITZ:</p> <p>5 Q Okay. So I've highlighted a</p> <p>6 sentence on paragraph 28. Can you see</p> <p>7 that?</p> <p>8 A Yes, yes.</p> <p>9 Q Okay. And I'm summarizing, it's</p> <p>10 your opinion that potential purchasers</p> <p>11 would understand that a hoverboard has an</p> <p>12 hourglass shape. Is that fair?</p> <p>13 A Yes.</p> <p>14 Q And from there, a consumer would</p> <p>15 look to other features in order to</p> <p>16 determine whether or not they are</p> <p>17 interested in that item. Is that fair?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And here you identify</p> <p>20 some of those features. Is that fair?</p> <p>21 A Yes.</p> <p>22 Q Okay. And that includes "the</p> <p>23 specific shape and appearance of the foot</p> <p>24 pads on top of the surface." Is that</p> <p>25 right?</p> | <p style="text-align: right;">Page 101</p> <p>1 J. GANDY</p> <p>2 potential purchaser would also consider</p> <p>3 "the shape and appearance of the lights."</p> <p>4 Is that fair?</p> <p>5 A Yes, yes.</p> <p>6 Q Okay. And then you say, "as</p> <p>7 well as other potential features that</p> <p>8 stand out to them." Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Can you think of any of these</p> <p>11 other potential features that a hoverboard</p> <p>12 purchaser would consider?</p> <p>13 A Could be, could be, you know,</p> <p>14 whether there were some distinguishing</p> <p>15 features to the wheel covers, any</p> <p>16 particular shape that they would feel</p> <p>17 would distinguish them or really stand out</p> <p>18 to them. Could be that in the narrow</p> <p>19 portion on the top surface in the center</p> <p>20 of the hoverboard as to what the contour</p> <p>21 of that is, what particular appearance it</p> <p>22 might have. Some of them have lights in</p> <p>23 the center area.</p> <p>24 Q What about the wheels? Is that</p> <p>25 a feature that a potential purchaser of a</p> |



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| <p style="text-align: right;">Page 102</p> <p>1 J. GANDY</p> <p>2 hoverboard would consider?</p> <p>3 A Sure. I think they could</p> <p>4 potentially look at the wheels. I mean,</p> <p>5 in this instance, they're not being</p> <p>6 claimed in the four design patents, so I</p> <p>7 didn't even reference anything about the</p> <p>8 wheels.</p> <p>9 Q All right. Let's move on to</p> <p>10 paragraph 29. So if you could just take a</p> <p>11 moment and just skim through that. I just</p> <p>12 have a few questions about it.</p> <p>13 A Can you scroll down there a</p> <p>14 little bit?</p> <p>15 Q Sure.</p> <p>16 A Okay.</p> <p>17 Q All right. So a few lines down,</p> <p>18 you say, "Although I have not been</p> <p>19 provided actual samples of the accused</p> <p>20 products, I consider the photographs that</p> <p>21 were supplied to me by counsel for</p> <p>22 multiple defendants to be of sufficient</p> <p>23 quality to understand all of the features</p> <p>24 and details and the overall shape and</p> <p>25 appearance of the accused products so as</p>                                | <p style="text-align: right;">Page 104</p> <p>1 J. GANDY</p> <p>2 front and rear surfaces of the accused</p> <p>3 products are the same." Do you see that?</p> <p>4 A Yes.</p> <p>5 Q So did you not receive</p> <p>6 photographs of the front and rear of each</p> <p>7 of the accused products?</p> <p>8 A I believe that was the case. We</p> <p>9 had, you know, a single view. It could</p> <p>10 have been the front or the rear. But I</p> <p>11 seem to recall that I didn't get two views</p> <p>12 that would be definitively the front and</p> <p>13 the rear, so I made an inquiry with</p> <p>14 Mr. Cheng about that.</p> <p>15 Q And do you know if that</p> <p>16 representation of the front and the rear</p> <p>17 surfaces of the accused products being the</p> <p>18 same, do you know if that is still true?</p> <p>19 A I have to assume that Mr. Cheng</p> <p>20 told me that that's what they were, and I</p> <p>21 have to assume that that's what they are.</p> <p>22 Q If it turns out the front and</p> <p>23 rear surfaces are different, does that</p> <p>24 impact your analysis here?</p> <p>25 A Probably not. That's kind of</p> |
| <p style="text-align: right;">Page 103</p> <p>1 J. GANDY</p> <p>2 to render an opinion of noninfringement of</p> <p>3 the asserted design patents." Did I read</p> <p>4 that correctly?</p> <p>5 A Yes, sure.</p> <p>6 Q And we discussed earlier that</p> <p>7 you did not receive actual samples; you</p> <p>8 based your analysis on photographs. Is</p> <p>9 that fair?</p> <p>10 A That's correct.</p> <p>11 Q Other than the photographs that</p> <p>12 are shown in this report, in the rebuttal</p> <p>13 report, were there any other photographs</p> <p>14 that you were provided with respect to the</p> <p>15 accused products?</p> <p>16 A Yeah. I think I was provided,</p> <p>17 you know, more than the photographs that I</p> <p>18 put in the report. What I did is, I just</p> <p>19 chose the ones that I felt were the</p> <p>20 clearest and the most accurate in showing</p> <p>21 the shape and appearance and details of</p> <p>22 the accused products.</p> <p>23 Q Okay. And the next sentence</p> <p>24 says, "Also, when I inquired, counsel for</p> <p>25 multiple defendants informed me that the</p> | <p style="text-align: right;">Page 105</p> <p>1 J. GANDY</p> <p>2 speculation without actually seeing</p> <p>3 whether they are different, whether it</p> <p>4 would or not. But I would in all</p> <p>5 likelihood say no, it probably wouldn't.</p> <p>6 Q But you would have to see the</p> <p>7 front and rear views to confirm that?</p> <p>8 MR. CHENG: Objection. Asked and</p> <p>9 answered. Go ahead, sorry.</p> <p>10 THE WITNESS: If, in fact, they</p> <p>11 weren't the same. Yeah, I would want to</p> <p>12 see what the difference was between the</p> <p>13 two.</p> <p>14 BY MR. BERKOWITZ:</p> <p>15 Q And I guess this question I</p> <p>16 probably should have asked when I first</p> <p>17 brought up this rebuttal report. Is there</p> <p>18 anything in your report that you believe</p> <p>19 is incorrect or you would like to change?</p> <p>20 A No. No.</p> <p>21 Q And as far as what we marked as</p> <p>22 Exhibit 1, your opening report, was there</p> <p>23 anything in there that, in going back, you</p> <p>24 believe is incorrect or that you would</p> <p>25 want to fix?</p>  |

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| <p style="text-align: right;">Page 106</p> <p>1 J. GANDY</p> <p>2 A Not that I'm aware of, no.</p> <p>3 Q Okay, thank you. Let's jump</p> <p>4 ahead to page 41 of your report. Okay.</p> <p>5 So this is Section H. So we're in Section</p> <p>6 VII, Subsection H of your report. Do you</p> <p>7 see that?</p> <p>8 A Yes.</p> <p>9 Q And this is a comparison of the</p> <p>10 723 patent, one of the asserted patents,</p> <p>11 against the Gyroor C product. Do you see</p> <p>12 that?</p> <p>13 A Yes.</p> <p>14 Q Okay. So let's walk through</p> <p>15 your analysis together. Maybe you can</p> <p>16 explain how you went about coming to your</p> <p>17 conclusions.</p> <p>18 So at the top here where my</p> <p>19 cursor is, you can see that there are</p> <p>20 three photographs. Is that right?</p> <p>21 A Yes.</p> <p>22 Q And is it fair to say that</p> <p>23 you're performing what's known as a three-</p> <p>24 way analysis here?</p> <p>25 A Yes.</p>   | <p style="text-align: right;">Page 108</p> <p>1 J. GANDY</p> <p>2 A Yes, I did, with the exception</p> <p>3 of the fact that the four design patents</p> <p>4 and the alleged infringing designs include</p> <p>5 foot pads that have a surface pattern on</p> <p>6 them, where in the 906 does not have that.</p> <p>7 Q Okay. Well, earlier we were</p> <p>8 talking about the top surface of the</p> <p>9 hoverboard. Can you sort of point that</p> <p>10 out here with reference to these three</p> <p>11 pictures that we see above paragraph 69?</p> <p>12 A You want me to point out the top</p> <p>13 surface?</p> <p>14 Q Yes, what would you consider the</p> <p>15 top surface?</p> <p>16 A Well, I consider the top surface</p> <p>17 this area between what I'm showing on</p> <p>18 my -- can you see my cursor, where I'm</p> <p>19 going?</p> <p>20 Q I can't. Maybe you could tell</p> <p>21 me where to move the cursor with reference</p> <p>22 to each of the photographs?</p> <p>23 A Okay, well if you want to take</p> <p>24 your cursor over just inside the wheel</p> <p>25 cover of the 723 on the left side, bring</p> |
| <p style="text-align: right;">Page 107</p> <p>1 J. GANDY</p> <p>2 Q Okay. And the three-way</p> <p>3 analysis involves comparisons between what</p> <p>4 specifically?</p> <p>5 A Well, it involves comparisons</p> <p>6 between the claimed design, the alleged</p> <p>7 infringing design, and the closest prior</p> <p>8 art.</p> <p>9 Q Okay. And as we talked about</p> <p>10 earlier, your opinion is that the closest</p> <p>11 prior art is the 906 patent; is that</p> <p>12 right?</p> <p>13 A That's correct, yes.</p> <p>14 Q And it's your opinion that the</p> <p>15 906 patent is the closest prior art for</p> <p>16 each of the four asserted patents; right?</p> <p>17 A Yes.</p> <p>18 Q Was there any other prior art</p> <p>19 that you considered as potentially being</p> <p>20 close to these products?</p> <p>21 A The only thing I referenced was</p> <p>22 the corresponding utility patent to the</p> <p>23 906 design patent.</p> <p>24 Q And you performed this analysis</p> <p>25 for each view of the asserted patents?</p> | <p style="text-align: right;">Page 109</p> <p>1 J. GANDY</p> <p>2 it in just slightly. Okay, I would</p> <p>3 consider that the top surface extending</p> <p>4 all the way across to the other wheel</p> <p>5 cover. And the same thing with the Gyroor</p> <p>6 C and the same thing with the 906.</p> <p>7 Q So all the area inboard of the</p> <p>8 wheel covers. Is that fair?</p> <p>9 A Yes, yes.</p> <p>10 Q Okay. And I believe you</p> <p>11 referred to this portion on the top</p> <p>12 surface as the foot pad? Is that fair?</p> <p>13 A Yes. Yes.</p> <p>14 Q So that would be -- in practice,</p> <p>15 that would be the rubber foot pad. Is</p> <p>16 that fair?</p> <p>17 A That's correct, yes.</p> <p>18 Q Okay. And we see that on the</p> <p>19 723 pad and on the Gyroor C. Is that</p> <p>20 fair?</p> <p>21 A That's correct.</p> <p>22 Q We do not see a foot pad on the</p> <p>23 906 patent.</p> <p>24 A That's correct. That's correct.</p> <p>25 Q And I think we're all in</p>   |

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| <p style="text-align: right;">Page 110</p> <p>1 J. GANDY</p> <p>2 agreement that the three of these products</p> <p>3 shown here have an hourglass shape. Is</p> <p>4 that fair?</p> <p>5 A Yes</p> <p>6 Q Okay. And as far as the wheel</p> <p>7 covers on the 906 patent, earlier you said</p> <p>8 that they enclose the wheel. Is that</p> <p>9 fair?</p> <p>10 A That's correct, yeah.</p> <p>11 Q Okay. When you're performing</p> <p>12 this analysis, are there any other</p> <p>13 prominent features of the 723 that you're</p> <p>14 considering?</p> <p>15 A You mean on the top surface?</p> <p>16 Q Right. Right now, we're looking</p> <p>17 at the top surface.</p> <p>18 A Right. Well, again, I would say</p> <p>19 the foot pads and, well, even though you</p> <p>20 can't really see it on the top surface,</p> <p>21 the top surface of the 723, the center</p> <p>22 portion, is convexly curved, whereas in</p> <p>23 the Gyroor C, it's actually recessed down.</p> <p>24 Q Is any one surface more</p> <p>25 important in your analysis than others?</p>  | <p style="text-align: right;">Page 112</p> <p>1 J. GANDY</p> <p>2 I guess, this mirror or equivalent</p> <p>3 portions that are sort of cut away from</p> <p>4 the top surface. Is that fair?</p> <p>5 A Right, right.</p> <p>6 Q Okay.</p> <p>7 MR. CHENG: Objection. That was</p> <p>8 taken out of context of the report.</p> <p>9 BY MR. BERKOWITZ:</p> <p>10 Q Okay. Mr. Gandy, just to</p> <p>11 clarify, you're referring to a "concavely</p> <p>12 curved, recessed center portion." I just</p> <p>13 want to make sure for the record that we</p> <p>14 are all on the same page as to what that</p> <p>15 means. Can you point that out for us?</p> <p>16 A Yeah. If you move your cursor</p> <p>17 just slightly up there where I think you</p> <p>18 were showing, that's what I consider to be</p> <p>19 the concavely curved, recessed center</p> <p>20 portion.</p> <p>21 Q Right. And since we have to</p> <p>22 reduce this description to words for the</p> <p>23 purposes of this transcript, how can we</p> <p>24 identify this center portion?</p> <p>25 A How, I'm sorry. How what?</p> |
| <p style="text-align: right;">Page 111</p> <p>1 J. GANDY</p> <p>2 A Well, I mean, I would certainly</p> <p>3 -- I think the foot pads probably have</p> <p>4 more impact on the overall visual</p> <p>5 appearance on these hoverboards than some</p> <p>6 of the other features. Particularly when</p> <p>7 you consider a person is going to buy</p> <p>8 them, that's where they're going to stand.</p> <p>9 So I think they're really going to be able</p> <p>10 to distinguish one foot pad over another.</p> <p>11 If there is a really different pattern on</p> <p>12 them, that's going to jump out at them.</p> <p>13 Q And would the ordinary observer</p> <p>14 notice or be able to distinguish a product</p> <p>15 that does not have foot pads at all?</p> <p>16 A Oh, yeah. I certainly think</p> <p>17 they would be able to distinguish it,</p> <p>18 yeah.</p> <p>19 Q Okay. Here in paragraph 69, you</p> <p>20 refer to a "concavely curved recessed</p> <p>21 center portion."</p> <p>22 A Uh-huh.</p> <p>23 Q I just want to confirm that</p> <p>24 we're all on the same page as to what</p> <p>25 that's referring to. You're referring to,</p> | <p style="text-align: right;">Page 113</p> <p>1 J. GANDY</p> <p>2 Q How can we describe this center</p> <p>3 portion for the purposes of getting it</p> <p>4 down on the transcript?</p> <p>5 A I think basically what I said.</p> <p>6 It's a concavely curved, recessed center</p> <p>7 portion.</p> <p>8 Q And is it just the top surface</p> <p>9 that has this concavely curved center</p> <p>10 portion?</p> <p>11 A Well, when you're looking at it</p> <p>12 from the top view, that's what it is.</p> <p>13 Obviously, when you look at it from the</p> <p>14 front or the rear, it's not necessarily</p> <p>15 going to look concavely curved. It's</p> <p>16 going to be recessed in.</p> <p>17 Q Okay. Is it fair to refer to</p> <p>18 this as sort of the "neck" of the</p> <p>19 hourglass?</p> <p>20 A Yeah, yeah. That's fair.</p> <p>21 Q Okay. Let's do that. Okay.</p> <p>22 A Uh-huh. Sure.</p> <p>23 Q All right. Let's look at some</p> <p>24 other views. I've moved over to page 42</p> <p>25 of your report. And at the top of the</p>  |

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| <p style="text-align: right;">Page 114</p> <p>1 J. GANDY</p> <p>2 page, you can see that there's four</p> <p>3 images. Is that fair?</p> <p>4 A Sure.</p> <p>5 Q Can you tell us in your own</p> <p>6 words what's being shown here?</p> <p>7 A Well, it's the front and rear</p> <p>8 surfaces.</p> <p>9 Q Okay. And you're showing the</p> <p>10 front and rear surfaces from the 723</p> <p>11 patent as well as a common front and rear</p> <p>12 surface of the 906 and a front and rear,</p> <p>13 what you call a front and rear view of the</p> <p>14 C product. Is that fair?</p> <p>15 A That's correct.</p> <p>16 Q Okay. As far as the photograph</p> <p>17 here of the C product, would you call that</p> <p>18 a front view? If that is, indeed, the</p> <p>19 front?</p> <p>20 A I would call it a front view.</p> <p>21 If you want to be more specific, what</p> <p>22 you're showing in the 723, the front and</p> <p>23 rear, that would be considered an</p> <p>24 elevation. Whereas the photograph of the</p> <p>25 Gyro C is not an elevation. But to be</p> | <p style="text-align: right;">Page 116</p> <p>1 J. GANDY</p> <p>2 A Mainly because of what happens</p> <p>3 in the center area of the hoverboard. In</p> <p>4 the 723, the center of the hoverboard has</p> <p>5 a slight convex curvature. So does the</p> <p>6 906. Whereas the Gyroor "C," the center</p> <p>7 portion is recessed.</p> <p>8 Q Are we able to tell from this</p> <p>9 photograph of the Gyroor C that the center</p> <p>10 portion is recessed?</p> <p>11 A I think so.</p> <p>12 Q Even though it's perspective</p> <p>13 view? It's your opinion that you can't</p> <p>14 tell that it's recessed?</p> <p>15 A Sure, sure. I mean, you can</p> <p>16 clearly see just inside of the foot pads,</p> <p>17 that's a sloping surface that goes down.</p> <p>18 You have those two, kind of arcuately</p> <p>19 curved dark areas that I assume are</p> <p>20 probably lights. And you can clearly see</p> <p>21 that's recessed.</p> <p>22 Q Okay. Now the Gyroor C product</p> <p>23 has lights on the -- let's assume that</p> <p>24 this is a front view of the Gyroor C. Let</p> <p>25 me start over. Strike that. Let's assume</p> |
| <p style="text-align: right;">Page 115</p> <p>1 J. GANDY</p> <p>2 fair, to understand, nothing we see in</p> <p>3 life is an elevation. It's in</p> <p>4 perspective.</p> <p>5 Q Right. So I think you answered</p> <p>6 my next question. What's shown as a</p> <p>7 photograph of the Gyroor C is more a</p> <p>8 perspective view. Is that fair?</p> <p>9 A Yeah. I would say it's a front</p> <p>10 perspective view.</p> <p>11 Q Okay. And the front view and</p> <p>12 the rear view of the 723 patent have</p> <p>13 slight differences. Is that fair?</p> <p>14 A Yes.</p> <p>15 Q Okay. And is it still your</p> <p>16 opinion that the 906 patent is -- I'm</p> <p>17 sorry. That the Gyroor C product, from</p> <p>18 this view, is closer to the 906 patent</p> <p>19 than the 723 patent?</p> <p>20 A No. I think you've got it the</p> <p>21 wrong way around. What I'm saying is that</p> <p>22 the 906 patent is closer in appearance to</p> <p>23 the 723 than it is to the Gyroor C.</p> <p>24 Q Why?</p> <p>25 MR. CHENG: Objection. Form.</p>                   | <p style="text-align: right;">Page 117</p> <p>1 J. GANDY</p> <p>2 that this is a front view of the Gyroor C.</p> <p>3 There are light bars on each end of the</p> <p>4 product?</p> <p>5 A Yeah. The front and rear</p> <p>6 surface?</p> <p>7 Q Yes.</p> <p>8 A Yeah, yeah.</p> <p>9 Q Okay. And if we assume that</p> <p>10 this is a front view, do we know if there</p> <p>11 are lights on the rear view, on the rear</p> <p>12 side of it?</p> <p>13 A Based on what Mr. Cheng has</p> <p>14 indicated to me, the front and rears are</p> <p>15 the same. So I certainly have to assume</p> <p>16 that that's what there are.</p> <p>17 Q Okay. And the 906 patent does</p> <p>18 not show any light bars; is that fair?</p> <p>19 A That's correct.</p> <p>20 Q Okay. Next, we're going to</p> <p>21 paragraph 70, where you're showing some</p> <p>22 different views of these references,</p> <p>23 including the wheels and, I would say, two</p> <p>24 perspective views. I mean, one</p> <p>25 perspective view of each of the three</p>  |

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| <p style="text-align: right;">Page 118</p> <p>1 J. GANDY</p> <p>2 references. Is that fair?</p> <p>3 A Sure.</p> <p>4 Q Okay. So it's your opinion that</p> <p>5 the wheel covers of the Gyroor C are</p> <p>6 unlike those of the 723 patent. Is that</p> <p>7 fair?</p> <p>8 A Yes, yes.</p> <p>9 Q And why is that?</p> <p>10 A Well, they don't extend over the</p> <p>11 wheel. In the 723, you can clearly see</p> <p>12 that the cover extends over a portion of</p> <p>13 the wheel.</p> <p>14 Q Right. But the wheel covers of</p> <p>15 the Gyroor C do not cover a significant</p> <p>16 portion of the wheel. Is that right?</p> <p>17 A That's correct. That's correct.</p> <p>18 And the wheel covers of the 723 certainly</p> <p>19 appear to be more of a semi-circular</p> <p>20 shape, whereas it appears the ends of the</p> <p>21 Gyroor C wheel cover are kind of flattened</p> <p>22 out. They're not as fairly a continuous</p> <p>23 radius.</p> <p>24 Q And as far as the wheel covers</p> <p>25 of the 906 patent, beyond being able to</p> | <p style="text-align: right;">Page 120</p> <p>1 J. GANDY</p> <p>2 Q And as far -- strike that. The</p> <p>3 bottom surface shows, is it fair to say</p> <p>4 that the bottom surface of the 723 patent</p> <p>5 has two cover plates that are held on by</p> <p>6 some sort of fasteners?</p> <p>7 A That's what it looks like, yeah.</p> <p>8 Q Okay. The bottom surface of the</p> <p>9 906 patent does not show any fasteners.</p> <p>10 Is that fair?</p> <p>11 A That's correct.</p> <p>12 Q And looking to the bottom view</p> <p>13 of the Gyroor "C," does that show two</p> <p>14 covers that are held on by fasteners?</p> <p>15 A That's what it looks like, yeah.</p> <p>16 Q Okay. And you do call out that</p> <p>17 the Gyroor C has vent holes. Is that</p> <p>18 fair?</p> <p>19 A Yes.</p> <p>20 Q And it's your opinion that an</p> <p>21 ordinary observer would pay attention to</p> <p>22 those vent holes?</p> <p>23 A Well, as I indicated in the</p> <p>24 statement above, all four of the design</p> <p>25 patents claim the bottom surface. So for</p>   |
| <p style="text-align: right;">Page 119</p> <p>1 J. GANDY</p> <p>2 say that they cover a significant portion</p> <p>3 of the wheel and that they're round, is</p> <p>4 there any other features that we can</p> <p>5 identify?</p> <p>6 A No.</p> <p>7 Q Okay. Let's jump over to</p> <p>8 paragraph 73 and discuss the bottom of the</p> <p>9 products. So you can just take a moment</p> <p>10 and read through paragraph 73. I'm on</p> <p>11 page 44 of Exhibit Number 2.</p> <p>12 A Okay.</p> <p>13 Q All right. So in this paragraph</p> <p>14 73, is it fair to say that you're</p> <p>15 performing a three-way comparison between</p> <p>16 the bottom of the 723 patent, the 906</p> <p>17 patent, and the Gyroor C?</p> <p>18 A Yes.</p> <p>19 Q Okay. And what are some of the</p> <p>20 prominent features of the bottom of the</p> <p>21 723 patent?</p> <p>22 A Basically, the bottom is pretty</p> <p>23 much plain. It's pretty much a plain,</p> <p>24 flat surface. There's not really any</p> <p>25 features on the bottom surface.</p>           | <p style="text-align: right;">Page 121</p> <p>1 J. GANDY</p> <p>2 the purpose of having to do an analysis of</p> <p>3 the, comparison of the claim designs and</p> <p>4 the alleged infringing devices, you've got</p> <p>5 to look at the bottom surfaces.</p> <p>6 Q And I believe earlier you</p> <p>7 testified that an ordinary observer would</p> <p>8 be most focused on the foot pads because</p> <p>9 that's what they're looking down on when</p> <p>10 they're standing on the product. Is that</p> <p>11 fair?</p> <p>12 A Yeah, I think that's fair.</p> <p>13 Q Okay. Do you have an</p> <p>14 understanding as to the purpose of the</p> <p>15 vent holes in the Gyroor C?</p> <p>16 A Well, I certainly would think</p> <p>17 they would be for some type of</p> <p>18 ventilation.</p> <p>19 MR. BERKOWITZ: Why don't we just --</p> <p>20 if you don't mind, let's just take a very</p> <p>21 quick break. I think I'm done with the</p> <p>22 questioning. I just want to take one last</p> <p>23 look through my notes. Okay?</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. BERKOWITZ: Let's just take five</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 J. GANDY</p> <p>2 minutes.</p> <p>3 MR. CHENG: If anyone wants to have a</p> <p>4 lunch break? Or, Mark, do you think</p> <p>5 you'll get everything wrapped up before?</p> <p>6 MR. BERKOWITZ: I think I'm done. I</p> <p>7 just want to go through my notes one last</p> <p>8 time.</p> <p>9 MR. CHENG: Yeah, sure. Okay.</p> <p>10 THE REPORTER: We are off the record</p> <p>11 at 12:37 p.m.</p> <p>12 (Off the record.)</p> <p>13 THE REPORTER: We are back on the</p> <p>14 record at 12:45 p.m.</p> <p>15 BY MR. BERKOWITZ:</p> <p>16 Q Okay. So, Mr. Gandy, I'm going</p> <p>17 to share my screen again. Can you see</p> <p>18 that I've shared my screen?</p> <p>19 A Yes, yes.</p> <p>20 Q Okay. So I'm currently in</p> <p>21 paragraph 100 of your rebuttal report that</p> <p>22 we've marked as Exhibit Number 2. It</p> <p>23 spans pages 64 through 65. Do you see</p> <p>24 that?</p> <p>25 A Sure, yes.</p>  | <p style="text-align: right;">Page 124</p> <p>1 J. GANDY</p> <p>2 believe it's on both the front and rear</p> <p>3 surface, that was basically it. Actually,</p> <p>4 I guess I'm looking at this, it does say</p> <p>5 the upper portion just includes the word</p> <p>6 "Gyroor."</p> <p>7 Q Does that word, in your opinion,</p> <p>8 distinguish the Gyroor D from, in this</p> <p>9 case, the asserted 195 patent?</p> <p>10 A I don't think it's the main</p> <p>11 reason why it would distinguish it.</p> <p>12 Again, I just point it out as just another</p> <p>13 feature that's on there.</p> <p>14 I'm aware of the fact that this</p> <p>15 is an issue before the Court of Appeals</p> <p>16 for the Federal Circuit right now. So I</p> <p>17 think that, whether it can be considered</p> <p>18 for the purposes of showing</p> <p>19 noninfringement I think is an issue that's</p> <p>20 actually in front of the Federal Circuit</p> <p>21 right now.</p> <p>22 Q Okay. So I guess --</p> <p>23 A That's the main reason why I</p> <p>24 pointed it out, because I'm aware of that.</p> <p>25 Q And do you believe it tends to</p> |
| <p style="text-align: right;">Page 123</p> <p>1 J. GANDY</p> <p>2 Q Do you see there's a photograph</p> <p>3 in approximately the middle of the page?</p> <p>4 A Yes.</p> <p>5 Q And it's entitled "Enlarged</p> <p>6 Partial View Gyroor D. Do you see that?</p> <p>7 A Yes.</p> <p>8 Q And this is either, you know, a</p> <p>9 front or rear view of the Gyroor D</p> <p>10 product. Is that fair?</p> <p>11 A Yes, yes.</p> <p>12 Q Okay. And on the right side of</p> <p>13 the photograph, there is a brand name. It</p> <p>14 says "Gyroor." Do you see that?</p> <p>15 A Yeah.</p> <p>16 Q Did you take that name into</p> <p>17 account in your analysis?</p> <p>18 A I did. I did. You know, as a,</p> <p>19 you know, it was part of the design of the</p> <p>20 Gyroor product. So I did, you know, at</p> <p>21 least point it out.</p> <p>22 Q Did you provide any weight to it</p> <p>23 in your analysis?</p> <p>24 A Other than just to mention that</p> <p>25 it is on, you know, the front surface, I</p> | <p style="text-align: right;">Page 125</p> <p>1 J. GANDY</p> <p>2 support a noninfringement position?</p> <p>3 A I don't think it would be the</p> <p>4 sole basis for it.</p> <p>5 Q But it is something that you</p> <p>6 relied upon here?</p> <p>7 A Yeah. I wouldn't have pointed</p> <p>8 it out if I didn't rely on it. Yeah.</p> <p>9 MR. BERKOWITZ: Okay. Yeah. I don't</p> <p>10 have any further questions for the</p> <p>11 witness.</p> <p>12 MR. CHENG: I just have one question,</p> <p>13 so we can get it wrapped up very quickly.</p> <p>14 EXAMINATION</p> <p>15 BY MR. CHENG:</p> <p>16 Q Mr. Gandy, I know that you</p> <p>17 stated that you don't know Mr. Rake, and</p> <p>18 you did not read his report. Do you have</p> <p>19 any objections to Mr. Rake's using of the</p> <p>20 Gestalt theory to support his view of the</p> <p>21 noninfringement in this case?</p> <p>22 MR. BERKOWITZ: Objection.</p> <p>23 A Should I answer?</p> <p>24 Q Sure, yes.</p> <p>25 A No. I don't have any objection</p>  |

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| <p style="text-align: right;">Page 126</p> <p>1 J. GANDY</p> <p>2 to it. It's just something I'm not aware</p> <p>3 of.</p> <p>4 MR. CHENG: I'm done with my</p> <p>5 questions. Thank you.</p> <p>6 MR. BERKOWITZ: Mr. Gandy, it was a</p> <p>7 pleasure. Thank you so much for your</p> <p>8 time.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 MR. CHENG: Thank you, Mr. Gandy, for</p> <p>11 attending the deposition, and thank you,</p> <p>12 Ms. Reporter for helping us with this.</p> <p>13 THE REPORTER: Thank you. We are off</p> <p>14 the record at 12:48 p.m.</p> <p>15</p> <p>16 (Whereupon, at 12:48 p.m., the</p> <p>17 proceeding was concluded.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 128</p> <p>1 CERTIFICATE OF DEPOSITION OFFICER</p> <p>2 I, ARKADY SANDOVAL, the officer before whom the</p> <p>3 foregoing proceedings were taken, do hereby certify that</p> <p>4 any witness(es) in the foregoing proceedings, prior to</p> <p>5 testifying, were duly sworn; that the proceedings were</p> <p>6 recorded by me and thereafter reduced to typewriting by a</p> <p>7 qualified transcriptionist; that said digital audio</p> <p>8 recording of said proceedings are a true and accurate</p> <p>9 record to the best of my knowledge, skills, and ability;</p> <p>10 that I am neither counsel for, related to, nor employed by</p> <p>11 any of the parties to the action in which this was taken;</p> <p>12 and, further, that I am not a relative or employee of any</p> <p>13 counsel or attorney employed by the parties hereto, nor</p> <p>14 financially or otherwise interested in the outcome of this</p> <p>15 action.</p> <p>16 </p> <p>17 ARKADY SANDOVAL</p> <p>18 Notary Public in and for the</p> <p>19 State of New Jersey and</p> <p>20 State of New York</p> <p>21</p> <p>22 [X] Review of the transcript was requested.</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 127</p> <p>1</p> <p>2</p> <p>3 A C K N O W L E D G E M E N T</p> <p>4</p> <p>5 I, JIM GANDY, certify</p> <p>6 that I have read the transcript of my</p> <p>7 testimony taken under oath on October 26,</p> <p>8 2022, and that the transcript is a</p> <p>9 true, complete and correct record of</p> <p>10 what was asked, answered and said</p> <p>11 during this deposition, and that the</p> <p>12 answers on the record as given by me</p> <p>13 are true and correct.</p> <p>14</p> <p>15 _____</p> <p>16 JIM GANDY</p> <p>17</p> <p>18 Signed and subscribed to</p> <p>19 before me, this day</p> <p>20 of , 20 .</p> <p>21 _____</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>                  | <p style="text-align: right;">Page 129</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, SUSAN J. SPAULDING, do hereby certify that</p> <p>3 this transcript was prepared from the digital audio</p> <p>4 recording of the foregoing proceeding, that said transcript</p> <p>5 is a true and accurate record of the proceedings to the</p> <p>6 best of my knowledge, skills, and ability; that I am</p> <p>7 neither counsel for, related to, nor employed by any of the</p> <p>8 parties to the action in which this was taken; and,</p> <p>9 further, that I am not a relative or employee of any</p> <p>10 counsel or attorney employed by the parties hereto, nor</p> <p>11 financially or otherwise interested in the outcome of this</p> <p>12 action.</p> <p>13</p> <p>14 </p> <p>15 SUSAN J. SPAULDING</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  |

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ERRATA SHEET  
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: Hangzhou Chic v. The Partnerships And Unincorporated  
DATE OF DEPOSITION: 10/26/2022  
WITNESSES' NAME: Jim Gandy

Jim Gandy

SUBSCRIBED AND SWORN TO BEFORE ME  
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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